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In the Supreme Court of the United States

OCTOBER TERM, 1970

WILSON BURTON, et al.,

Defendants-Appellants,

vs.

AMERICAN NATIONAL BANK AND TRUST COMPANY, as Trustee under Trust No. 16963,

Plaintiff-Appellee.

(Together With 89 Other Cases)

On appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

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No.

WILSON BURTON, et al.,

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vs.

AMERICAN NATIONAL BANK AND TRUST COMPANY, as Trustee under Trust No. 16963,

Plaintiff-Appellee.

(Together With 80 Other Cases)

On appeal from the Supreme Court of the State of Illinois.

JURISDICTIONAL STATEMENT

Appellants in the 81 cases listed in Appendices 1 and 2, attached hereto, appeal from the judgment of the Supreme Court of the State of Illinois dismissing their appeals from judgments entered against them in actions brought under the Illinois Forcible Entry and Detainer Act. (Ill. Rev. Stat., 1969, Ch. 57, §§ 1-22).

OPINIONS BELOW

There is no opinion below in these cases. Appellants appeal from paragraph 1 of the Illinois Supreme Court's order of May 8, 1970, in *Rosewood Corp.* v. *Fisher*, No. 42433 (Consolidated), which is attached hereto as Appendix 3. In that order the court dismissed appeals in these

cases. The Illinois Supreme Court's order denying reconsideration is attached as Appendix 4.

On April 15, 1970, the Illinois Supreme Court filed its unreported opinion in *Rosewood Corp.* v. *Fisher*, No. 42433, with which these cases were consolidated prior to May 8, 1970. A copy of the Illinois Supreme Court's opinion in that case is attached hereto as Appendix 5.

On November 18, 1970, the Illinois Supreme Court filed its opinion in *Alexander* v. *Hamilton Corp.*, Nos. 42882, 42915 (Consol.). The present cases were once consolidated with the cases in *Alexander* which presented to the Illinois Supreme Court the same questions as are presented here. A copy of the Illinois Supreme Court's opinion is attached hereto as Appendix 7.

JURISDICTION

Appellees brought these actions under the Illinois Forcible Entry and Detainer Act (Ill. Rev. Stat., 1969, Ch. 57, §§ 1-22) to recover possession of residential real estate in the City of Chicago which appellants were buying from them on installment land contracts. In their brief on appeal to the Illinois Supreme Court, filed February 10, 1970, appellants argued that the appellate provisions of the Illinois Forcible Entry and Detainer Act, Sections 18 and 19 (Ill. Rev. Stat., 1969, Ch. 57, §§ 19, 20) violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The Illinois Supreme Court dismissed appellants' appeals on May 8, 1970. (App. 3.) Appellants' motion for reconsideration was denied on June 25, 1970. (App. 4.) On November 18, 1970, the Illinois Supreme Court filed a per curiam opinion reaffirming its denial of reconsideration. (App. 7, p. 34.) On July 23, 1970, appellants filed with the Supreme Court of Illinois their notice of appeal to this Court. A copy of this notice of appeal is attached hereto as Appendix 6. On September 22, 1970, Mr. Justice Marshall extended appellants' time within which to

docket this appeal until November 22, 1970. The jurisdiction of the Supreme Court of the United States to review the judgment of the Supreme Court of Illinois by appeal is conferred by 28 U.S.C. §1257(2) and sustained by *Lawrence* v. *State Tax Commission*, 286 U.S. 276, 282-83 (1932), and *Sanks* v. *Georgia, prob. juris. noted*, 395 U.S. 974 (1969).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Fourteenth Amendment to the United States Constitution provides in part:

> " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Illinois Constitution, Article VI, Sections 1, 5, 7 and 9 provide:

> "§ 1. The judicial power is vested in a Supreme Court, an Appellate Court and Circuit Courts."
>
> "§ 5. . . . Appeals from the final judgments of circuit courts shall lie directly to the Supreme Court as a matter of right . . . "
>
> "§ 7. In all cases, other than those appealable directly to the Supreme Court, appeals from final judgments of a Circuit Court lie as a matter of right to the Appellate Court in the district in which the Circuit Court is located, . . . "
>
> "§ 9. The Circuit Court shall have unlimited original jurisdiction of all justiciable matters, and such powers of review of administrative action as may be provided by law."

Section 18 of the Illinois Forcible Entry and Detainer Act provides:

> "Any party aggrieved by the verdict of the jury or decision of the court upon any trial under this Act

may have an appeal, to be taken to the same courts, in the same manner, and heard in the same way as appeals which are taken in other cases except that notice of appeal and bond must be filed within 5 days from the rendition of the judgment, and no writ of restitution shall be issued in any case until the expiration of these 5 days."

Section 19 of the Illinois Forcible Entry and Detainer Act provides:

"If the defendant appeals, the condition of the bond shall be that he will: (a) prosecute such appeal with effect; and (b) regardless of the outcome of such appeal, pay all rent then due or that may become due before the final determination of the suit; and (c) in case the judgment from which the appeal is taken is affirmed or appeal dismissed, pay all damages and loss which the plaintiff may sustain by reason of the withholding of the premises in controversy, and by reason of any injury done thereto during such withholding, until the restitution of the possession thereof to the plaintiff, together with all costs that may accrue; which said bond shall be in sufficient amount to secure such rent, damages and costs, to be ascertained and fixed by the court. And the court in which the appeal may be pending may require a new bond in a larger amount, if necessary to secure the rights of the parties; and in case of continuance, may require another bond to be given to further secure the same."

Prior to January 1, 1970, Rule 303 of the Illinois Supreme Court provided in part:

"(a) The notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is filed, whether in a jury or a non-jury case, within 30 days after the entry of the order disposing of the motion.

• • •

"(e) On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal, filed in the reviewing court within 30 days of the expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing."

Since January 1, 1970, Rule 303 of the Illinois Supreme Court Rules provides in part:

"(a) Except as provided in paragraph (b) below, the notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely post-trial motion directed against the judgment is filed, whether in a jury or a nonjury case, within 30 days after the entry of the order disposing of the motion. If a timely notice of appeal is filed and served by a party, any other party, within 10 days of service upon him, or within 30 days of the entry of judgment, whichever is later, may join in the appeal, appeal separately, or cross appeal by filing a notice of appeal.

• • •

"(b) (1) *Forcible Entry and Detainer.* The time and method of appeal in forcible entry and detainer cases shall be as provided by statute (Ill.Rev.Stat., ch. 57, § 19 et seq.), and paragraph (e) of this rule is inapplicable to those cases.

• • •

"(e) On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal, filed in the reviewing court within 30 days of the expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing."

QUESTIONS PRESENTED

1. Whether the accelerated appeal provisions which Illinois applies only to cases arising under its Forcible Entry and Detainer Act deny contract buyers equal protection of the laws.

2. Whether conditioning appeals by poor persons upon the posting of an appeal bond violates the principles announced by this Court in *Griffin* v. *Illinois*, 351 U.S. 12 (1956).

3. Whether it is contrary to the principles announced by this Court in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), for Illinois to establish requirements for appeals in Forcible Entry and Detainer Act cases which adversely affect the fundamental rights of contract buyers, without at the same time promoting a compelling state interest.

4. Whether the Illinois courts have deprived appellants-contract buyers of their equity in their homes without due process of law in violation of the Fourteenth Amendment by not reversing and remanding these cases after holding that the judgments of the trial courts were in error.

STATEMENT OF THE CASE

This appeal involves 81 separate cases which were once consolidated with 171 other cases in the Illinois Supreme Court. Appellants in each case are Negroes who purchased homes under installment land contracts, who are challenging the constitutionality of the appellate provisions of the Illinois Forcible Entry and Detainer Act (Ill. Rev. Stat. 1969, Ch. 57 §§ 1-22) ("Forcible Act").

Although these cases are entangled in difficult procedural history, which is set out below, the essential facts are simple. Appellees secured judgments for possession, costs and attorney fees against appellants in actions brought under the Illinois Forcible Entry and Detainer Act. On appeal, appellants attacked the constitutionality of the Forcible Act, including its appellate provisions. The Illinois Supreme Court first held that the trial courts were

in error in interpreting the Forcible Act to prohibit appellants from filing their answers and affirmative defenses. On further consideration, however, the Illinois Supreme Court dismissed these appeals, because appellants failed to comply with the appellate provisions of the Forcible Act.

Appellants in each case have contracted with the appellee to purchase residential property in the City of Chicago under an installment land contract providing for a fixed monthly payment to be made until the entire purchase price, together with interest on the outstanding balance, is paid. In the event of default in any monthly payment the appellee-seller is entitled to declare the buyers' rights forfeited, terminate the contract, and recover possession of the property.

In July, 1969, appellants and other Negro contract buyers in the City of Chicago refused to make further payments on their installment land contracts. They contend that the contracts are unlawful, because they were procured by the sellers in violation of their civil rights. In January, 1969, they had filed two class actions seeking rescission or reformation of those contracts. See *Contract Buyers League* v. *F & F Investment*, 300 F. Supp. 210 (N.D. Ill. 1969). In the face of the payment strike, appellees declared the contracts forfeited and brought actions under the Illinois Forcible Act.

Although each of these cases was considered separately by the trial court, the proceedings were substantially the same in all cases. Each plaintiff, appellee here, alleged that it was entitled to possession of certain premises and that possession was unlawfully withheld by the defendants, appellants here. Appellants, many of whom were not represented by counsel, sought by their answers to interpose

as defenses the claims which they had raised in their federal lawsuits, that their installment land contracts are unconscionable and violate the United States Constitution and are illegal agreements in violation of Sections 1982 and 1983 of Title 42 of the United States Code.

In each instance the seller, relying on Section 5 of the Illinois Forcible Act, moved to strike the answer and affirmative defenses. Section 5 provides in part:

> ". . . [N]o matters not germane to the distinctive purpose of the proceedings shall be introduced by joinder, counterclaim or otherwise . . ."

The magistrates hearing these cases struck the defenses. Judgments were subsequently entered awarding the plaintiff in each case possession of the defendants' home as well as its costs and attorneys fees. The practical effect of these judgments was not only to evict these contract buyers from their homes, but also to deprive them of the equities that they had built up in their buildings.

After judgments had been entered, the trial courts stayed issuance of the writs of restitution for periods varying from 15 to 90 days. In seventeen of these cases the defendants requested that the court set an appeal bond in accordance with Section 19 of the Illinois Forcible Act. Section 19 has been interpreted to require that the bond be set in an amount at least equal to payments due and which may become due during the course of the appeal as well as damage or loss sustained by the plaintiff. The bonds which were set varied from $2,500 to $4,500.

The Illinois courts have interpreted the Illinois Forcible Act to require that an appeal bond be filed as a condition precedent to a defendant appealing from an adverse judgment in an action brought under that act. In many cases, however, appellants did not request that an appeal bond be set. Experience in similar cases had shown that the

amount of the bond would be far above the appellants' limited means. Repeated attempts to reduce the size of the security required or obtained relief from the requirement that a year's payment in advance be posted within five days demonstrated that such efforts would be futile. See jurisdictional statement filed in *Durham* v. *Independence Homes, Inc.*, 397 U.S. 95 (1970).

Section 18 of the Forcible Act (Ill. Rev. Stat., 1969, Ch. 57 §19) requires that the notice of appeal in Forcible Act cases be filed within 5 days of the entry of judgment.* Either from lack of knowledge of the appellate procedures or from knowledge of the futility of securing the required appeal bond, appellants did not file notices of appeal within the 5 day period.

On January 22, 1970, the Illinois Supreme Court entered an order consolidating under the title *Rosewood Corp.* v. *Fisher*, No. 42433, two cases in which the appellants questioned the constitutionality of the Illinois Forcible Act. On February 3, 1970, an order was entered consolidating with *Rosewood Corp.* v. *Fisher* 157 additional cases in which the proceedings in the trial court were similar to those in the cases now appealed to this Court. Although notices of appeal were filed in all those cases, no appeal bonds had been filed. On February 10, 1970, appellants in the consolidated appeals filed their brief challenging the constitutionality of the Forcible Act. They argued specifically that Sections 18 and 19 violated the

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* Prior to January 1, 1970, the Rules of the Illinois Supreme Court were in conflict with the Forcible Act and allowed 30 days within which to file a notice of appeal in all cases. These rules were amended effective January 1, 1970, to limit to 5 days the period within which a notice of appeal might be filed in cases arising under the Forcible Act. See Rule 303, Ill. Sup. Ct. Rules before and after Jan. 1, 1970.

Equal Protection and Due Process Clauses of the Fourteenth Amendment.

On February 17, 1970, appellants in the cases now before this Court moved in the Illinois Supreme Court for an order granting them leave to file notices of appeal to the Illinois Supreme Court, to file sample short records, and for an order consolidating these cases with *Rosewood Corp.* v. *Fisher*, and setting the same schedule for briefing and argument as previously set. In the same motion 19 other contract buyers who had previously filed notices of appeal after the expiration of the 5 day period also sought consolidation. An order granting leave to file the notices of appeal and consolidating all those cases with *Rosewood Corp.* v. *Fisher* was entered on March 10, 1970.

In the cases listed in Appendix 1 hereto a motion for leave to file a notice of appeal was made within 60 days after the entry of judgment.* If the appellate provisions of the Forcible Act are unconstitutional these notices were timely. Except in Forcible Act cases, Rule 303 of the Rules of the Illinois Supreme Court provide for the filing of notices of appeal within 60 days after the entry of judgment.

In the cases listed in Appendix 2, the motion for leave to file the notices of appeal was made more than 60 days after the entry of judgment. Appellants argued to the Illinois Supreme Court that, in light of the unconstitutional appellate provisions of the Forcible Act, it was authorized to grant leave to file the notices of appeal in those cases by Rule 366(a)(5) of the Illinois Supreme Court. Rule 366(a)(5) authorizes the reviewing court to make any order that the case may require.

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* In the last case listed in Appendix 1 the motion for leave to file the notice of appeal was filed within 30 days of the entry of judgment.

Appellants in the consolidated appeals in the Illinois Supreme Court attacked the constitutionality of the provisions of the Forcible Act which had been construed to prohibit the filing of their answers and affirmative defenses, to require an appeal bond as a condition precedent to an appeal even if the appellant does not seek to supersede the judgment, and to require the filing of the bond and notice of appeal within 5 days after entry of judgment. On April 15, 1970, the Illinois Supreme Court filed an opinion in *Rosewood Corp.* v. *Fisher* (App. 5) holding that Section 5 of the Illinois Forcible Act could not be interpreted to bar the filing of the defendants' answer and counterclaim in that case. The Illinois Supreme Court did not, however, decide the questions raised with respect to the appellate provisions of the Forcible Act. The Court reversed and remanded only *Rosewood Corp.* v. *Fisher*, the only case in which the appeal had been properly perfected in accordance with the provisions of the Forcible Act.*

On May 8, 1970, the Illinois Supreme Court, on its own motion, entered an order (App. 3) providing for further proceedings in those of the consolidated cases which had not been decided by its opinion in *Rosewood Corp.* v. *Fisher*. Paragraph 1 of the May 8, 1970, order vacated and set aside so much of the order of March 10, 1970, as granted leave to file notices of appeal in the 81 cases now appealed to this Court and dismissed the appeals in those cases. The remaining cases were consolidated under the title of *Lawson Corp.* v. *Colquitt*, No. 42915. Appellants were requested to file a statement of the issues remaining for decision and the cases were taken under advisement.

On May 22, 1970, appellants in these 81 cases filed a motion for reconsideration in the Illinois Supreme Court. In support of their motion for reconsideration appellants pointed out that their cases pre-

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* Initially, a second case, *Lawson Corp.* v. *Jackson*, was reversed, but that appeal was later dismissed as moot.

sented the same questions as presented by 19 of the cases consolidated with *Lawson Corp.* v. *Colquitt*. Appellants in all 100 cases claimed that the appellate provisions of the Forcible Act violated the United States Constitution. (To the extent that the provisions of Section 18 of the Forcible Act were embodied in Rule 303(b)(1) of the Rules of the Illinois Supreme Court after January 1, 1970, the constitutionality of that Rule was also questioned.) Together with their motion for reconsideration certain appellants filed Affidavits of Poverty showing their financial inability to post appeal bonds. Appellants' motion for reconsideration was denied on June 25, 1970.

On November 18, 1970, the Illinois Supreme Court decided the cases consolidated with *Lawson Corp.* v. *Colquitt*, filing its opinion under the title *Alexander* v. *Hamilton Corp.*, Nos. 42882, 42915 (Consol.). The Court concluded that Sections 18 and 19 of the Illinois Forcible Act are constitutional. A copy of the court's opinion is attached hereto as Appendix 7.*

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

In *Rosewood Corp.* v. *Fisher*, No. 42433 (Ill. Sup. Ct. April 15, 1970), the Illinois Supreme Court held that the trial courts were in error in striking the answers and affirmative defenses filed by appellants. At the time that

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* The short time between the filing of the Illinois Supreme Court's opinion in *Alexander* v. *Hamilton Corp.* and the date on which appellants were required to file this jurisdictional statement prevented appellants from reflecting the Illinois Supreme Court's opinion in their statement of the grounds upon which it is contended the federal questions are substantial.

Appellants in *Alexander* v. *Hamilton Corp.* have not yet determined whether to petition for rehearing or immediately to appeal to this Court.

decision was filed, appellants' cases were consolidated with *Rosewood Corp.* v. *Fisher*. Despite this holding, the court dismissed these appeals, evidently because appellants had not complied with the appellate provisions of the Illinois Forcible Act. This action was taken despite the appellants' constitutional attack on those provisions.

The broad question presented to the Court is whether the State of Illinois can deny these appellants an appeal as of right as provided by the state constitution, by imposing unreasonable and discriminatory time periods and financial burdens. Appellants contend that the statutory requirements with which they failed to comply violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Similar questions are now before the Court in *Sanks* v. *Georgia*, probable jurisdiction noted, 395 U. S. 974 (1969), restored to calendar for reargument, 399 U.S. 922 (1970) (No. 28, Oct. Term 1970).

Defendants in actions brought under the Illinois Forcible Entry and Detainer Act, and similar statutes in other states, are almost always poor and uneducated. Illinois has imposed upon such defendants substantially greater burdens as conditions precedent to exercising their right to appeal than are imposed upon defendants in other actions or upon other homeowners threatened with the loss of their homes. Discriminatory provisions in statutes such as the Illinois Forcible Act are not unique to Illinois. Similar questions have arisen in other jurisdictions. See *Sanks* v. *Georgia*, *supra*; *Simmons* v. *West Haven Housing Authority*, 399 U.S. 510 (1970); *Bell* v. *Tsintolas Realty Co.*, 430 F.2d 474 (D.C. Cir. 1970); *Mihans* v. *Municipal Court*, 7 Cal. App. 3rd 479, 87 Cal. Rptr. 17 (1970). The questions which appellants raise are a matter of national concern and it is appropriate that this Court give them plenary consideration.

I.

THIS COURT SHOULD CONSIDER THE PREVIOUSLY UNDECIDED QUESTION OF WHETHER ACCELERATED APPEAL PROVISIONS APPLICABLE ONLY IN THE CASE OF FORCIBLE APPEALS DENY CONTRACT BUYERS EQUAL PROTECTION OF THE LAWS.

In attempting to appeal from adverse judgments in Forcible Act cases appellants encountered an invidious discrimination in judicial procedure. The Illinois Supreme Court determined that the Equal Protection Clause permits a State to single out Forcible Act cases for a drastically shortened appeal period, even though the effect is to impose an indefensible discrimination against contract buyers. This Court has never considered the constitutionality of this kind of discrimination.

Section 18 of the Forcible Act (Ill. Rev. Stat., 1969, Ch. 57 §19) requires that a contract buyer appealing from an adverse judgment under the Forcible Act file his notice of appeal and appeal bond within five days of the entry of judgment. The Section 19 of the Act requires that the appeal bond secure payment of money due or to become due prior to final determination, as well as all damages or loss which the plaintiff might sustain by reason of the appeal's delaying his recovery of possession of the property in controversy.

The Forcible Act is the only Illinois statute limiting the appeal period to five days. The five day period may, by the intervention of Saturday, Sunday, and holidays become as few as two working days. In all other civil and

criminal appeal situations in Illinois of which appellants are aware, even interlocutory appeal, the appellant has at least 30 days within which to perfect an appeal.

This five day limitation works a particular hardship on contract buyers, because of the appeal bonds they must post to perfect their appeals are large in proportion to their limited means. The Forcible Act has been construed to require that the appeal bond be posted within the five day period as a condition precedent to perfecting an appeal. If the requisite bond is not posted, the appeal is dismissed. In all other cases, if the appeal bond is not posted, the judgment is not superseded, but the appellant may still maintain his appeal.

The bonds set in Forcible cases are frequently substantial in relation to the contract buyer's means. In the present cases they varied from $2,500 to $4,500. Bonds have been set as high as $7,500. *E.g. Chatham Town Homes, Inc.* v. *O'Neal*, No. 69 M1 76929 (Cir. Ct. Cook Cty., Ill.). Since Negro contract buyers rarely have sufficient assets to obtain a surety bond, it is necessary for them to secure their appeal bonds with cash in the full amount. Even contract buyers financially able to provide sufficient security might be unable to do so within the short period allowed by the statute.

The short time within which to perfect an appeal is not part of an accelerated appellate process intended to advance the final determination. After the notice of appeal is filed, the appellant still has 63 days within which to file the record on appeal. An additional 84 days is allowed for the parties to file their briefs. All these times may be extended by the courts. Rules 326, 343, Ill. Sup. Ct. Rules. In *Rosewood Corp.* v. *Fisher* the notice of appeal was filed on May 23, 1969, but the record on appeal

was not filed until January 21, 1970. Even after the filing of briefs there are frequently long delays before cases are set for argument.

The short appeal period is not related to the protection of the plaintiff's right to recover possession of the property. The seller cannot obtain possession of the property until a writ of restitution has been issued. The trial courts regularly stay the issuing of the writ for a period of thirty to ninety days after the entry of judgment. In only sixteen of the present cases was the writ stayed for a shorter period. Fifteen days is generally the minimum period of stay in the City of Chicago. Order of Aug. 10, 1967, Joseph E. Hermes, A. J. (Cir. Ct. Cook Cty. Ill., 1st Mun. Dist.).

The requirement that the contract buyer perfect his appeal in 5 days does not provide additional protection to the contract seller. The short appeal period has no relation to the time at which the seller recovers possession. In these cases the sellers' recovery of possession was delayed up to 90 days after judgment. A longer time in which to file a notice of appeal would have no effect on the seller's rights. A longer time to file a supersedeas bond would not interfere with the seller's rights so long as the buyer were required to file his bond before the writ of restitution could issue.

Illinois has provided for an appeal as of right in all cases. Ill. Const. Art. VI, §§ 5, 7. Once a state establishes a system of appellate review, due process and equal protection require that the right of appeal be made available to all persons equally. Unreasonable distinctions may not hobble the right of all citizens to equal access to the courts. *Rinaldi* v. *Yeager*, 384 U.S. 305, 308-09 (1966).

The Illinois Supreme Court itself has recognized that unreasonably short appeal periods violate constitutional limitations. In *Board of Education* v. *County Board of School Trustees*, 28 Ill. 2d 15, 191 N.E. 2d 65 (1963), the court found unconstitutional certain amendments to the Illinois School Code and Illinois Administrative Review Act which limited the time for review of decisions of the County Board of School Trustees to 10 days. The court held this brief period unconstitutional because 35 days had been established as the period for review of other administrative decisions. The court reasoned (28 Ill. 2d at 19, 191 N.E. 2d at 67):

> ". . . Obviously the 10-day period is an exceedingly brief time within which to secure from a school board the necessary considerations and action preliminary to filing a complaint to review an adverse decision. The legislative history of these provisions yields no clue to the need for summary action. No reasons have been suggested to us which necessitate such discrimination against those desiring judicial review of a decision of a county board of school trustees. Even in disconnection proceedings changing school district boundaries, any decision by the county board becoming final between September 1 and June 30 of any year does not affect the administration of or attendance at the schools until the following July 1."

The abbreviated appeal provision which applies only to Forcible cases is likewise unfounded in the case of contract buyers. This discrimination in the time for perfecting an appeal as of right is particularly aggravating in the present cases where the Illinois Supreme Court has already held that the trial court proceedings in these cases were in error.

The Illinois Supreme Court observed in *Board of Education* that it could "conceive of substantial reasons for providing short appeal provisions in forcible detainer matters." (28 Ill. 2d at 19.) In support of the quoted reference to the Forcible Act, the court said that "serious or irreparable damage by irresponsible tenants might occur." This reasoning makes little sense in light of the practice of staying the writ of restitution. It is clearly not applicable to the contract buyers involved here, many of whom have made valuable improvements to their family homes.

In its recent opinion in *Alexander* v. *Hamilton*, Nos. 42882, 42915 (Consol.) (November 18, 1970) (App. 7, p. 33), the Illinois Supreme Court again tries to justify the short appeal period by cataloging possible injuries to the plaintiff-contract seller, were the defendant contract buyer to stay in the house. In the first place the court failed to recognize that in attacking the 5 day appeal period contract buyers do not seek to remain in possession without charge and without making bond. They seek only the same period of time as other litigants to perfect an appeal and secure a supersedeas bond should they desire to do so. More important, however, both the Illinois legislature and the trial courts have rejected the fears expressed by the Illinois Supreme Court. The legislature has provided that contract buyers may be permitted to remain in possession up to 60 days after judgment without charge and that in certain cases they must be permitted to remain in possession 180 days without charge. (Ill. Rev. Stat., 1969, Ch. 57, § 13.) Yet, even in such cases the contract buyer is permitted only 5 days in which to perfect an appeal. The trial courts, as is shown by Appendices 1 and

2, regularly apply this provision of the Forcible Act. In the face of these circumstances the 5 day appeal period is entirely arbitrary.

This Court should consider whether the Constitution permits Illinois to establish discriminatory short appeal periods in order to discourage the taking of appeals in Forcible Act cases.

II.

THIS COURT SHOULD CONSIDER WHETHER CONDITIONING APPEALS BY POOR PERSONS UPON THE POSTING OF AN APPEAL BOND VIOLATES THE PRINCIPLES ANNOUNCED BY THIS COURT IN GRIFFIN v. ILLINOIS, 351 U.S. 12 (1956).

In dismissing these appeals because of appellants' failure to file appeal bonds, the Illinois Supreme Court determined that persons may be denied an appeal because of their poverty. This action is in direct conflict with the principles announced by this Court in *Griffin* v. *Illinois*, 351 U.S. 12 (1956), and many subsequent decisions. *E.g.*, *Williams* v. *Oklahoma City*, 395 U.S. 458 (1969); *Smith* v. *Bennett*, 365 U.S. 708 (1961).

The Illinois Constitution provides for an appeal as of right in all cases. Ill. Const. Art. VI, Sec. 5, 7. Yet, the Illinois Courts have interpreted the Forcible Act to condition that appeal upon the filing of a substantial appeal bond within five days of judgment. Failure to post the bond is a ground for dismissal of the appeal. The appellate courts are therefore closed to contract buyers who lack the funds necessary to post the bond.

As a result of the extraordinary construction placed upon the appeal provisions of the Forcible Act, many appeals taken by defendants have been dismissed for failure to

post appeal bonds. *E.g.*, *Durham* v. *Independence Homes, Inc.*, 397 U.S. 95 (1970) (appeal dismissed per curiam); *Long* v. *Long*, 51 Ill. App. 2d 401, 201 N.E. 2d 241 (3rd Dist. 1964); *Sawyer* v. *Sholem*, 2 Ill. App. 2d 167, 118 N.E. 2d 889 (3rd Dist. 1954) (abst.); *Davis* v. *Moore*, 1 Ill. App. 2d 296, 117 N.E. 2d 587 (4th Dist. 1954) (abst.); *Karavidas* v. *O'Dwyer*, 333 Ill. App. 154, 76 N.E. 2d 785 (1st Dist. 1947) (abst.).

In *Jack Spring, Inc.* v. *Little*, Nos. 41730, 41739, (Consol.) (Ill. Sup. Ct. Nov. 18, 1970), the Illinois Supreme Court seems to conclude that appeals in Forcible Act cases are not conditioned on the filing of a bond (Op. p. 14):

> ". . . [W]here the tenant does not desire a supersedeas after an adverse judgment in the trial court, but seeks to prosecute an appeal, we see no obstacle in the [Forcible] Act prohibiting the course of conduct. Section 18 provides for such an appeal."

Inexplicably, however, the Illinois Supreme Court did not overrule the earlier cases to the contrary, relied on those cases in *Alexander* v. *Hamilton Corp.*, Nos. 42882, 42915, (Consol.) (Ill. Sup. Ct. Nov. 18, 1970) (App. 7, p. 24), and did not give appellants in *Alexander* the benefit of the conclusion stated in *Jack Spring, Inc.* Needless to say, appellants here have not received the benefit of that rule.

The inherent discrimination against poor people is obvious: the wealthy contract purchaser can promptly post a cash bond and continue to live in his home during appeal, but the contract buyers here involved cannot afford that luxury. They lose not only the right to live in their homes during an appeal, but even the right to appeal at all. Thus their right fully to litigate the merits of their case has been lost solely because they are not wealthy.

In *Griffin* v. *Illinois*, 351 U.S. 12 (1956), this Court held that indigent defendants in criminal cases must be

furnished with free trial transcripts so that they can enjoy the same right to appeal as wealthy defendants. The Court stated that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." (351 U.S. at 19.)

First in *Griffin*, then in *Douglas* v. *California*, 372 U.S. 353 (1963), and most recently in *Williams* v. *Oklahoma City*, 395 U.S. 458 (1969), this Court has explained that the right of equal access to state courts of appeal is independent of any federal constitutional right of appeal. In *Griffin*, this Court said (351 U.S. at 18):

> ". . . It is true that a State is not required by the Federal Constitution to provide appellate . . . review at all . . . But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty."

In *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966), this Court applied the *Griffin* principle to strike down Virginia's poll tax, holding that the tax denied equal protection to those citizens who were unable to pay it and therefore were unable to vote. More recently, in considering the right to vote, this Court stated that "lines . . . drawn on the basis of wealth . . . render a classification highly suspect and thereby demand a more exacting judicial scrutiny." *McDonald* v. *Board of Election Commissioners*, 394 U.S. 802, 807 (1969).

Though *Griffin*, *Douglas*, and *Williams* were criminal cases, the Due Process and Equal Protection Clauses are equally applicable to civil proceedings. In *Smith* v. *Bennett*, 365 U.S. 708 (1961), a habeas corpus writ had not been available to a state prisoner because he could not pay the customary $4 filing fee. This Court refused to

"quibble as to whether in this context it [the habeas corpus proceeding] be called a civil or criminal action . . ." (365 U.S. at 712.) The remedy sought by the indigent petitioner was an important one, and access to it could not be denied him by calling it a "civil" action.

The lower federal courts have repeatedly held that the principles of *Griffin* apply to civil cases. The First Circuit has ruled that a poor tenant in a rent delinquency proceeding begun in the state court could remove the case to the federal court without having to post the usual removal bond (28 U.S.C. § 1446), because of the "principle that justice [access to the courts] is not to be denied because of the litigant's poverty." *Pasquarella* v. *Santos*, 416 F. 2d 436, 438 (1st Cir. 1969).

In *Lee* v. *Habib*, 424 F. 2d 891 (D.C.Cir. 1970), an indigent tenant-defendant was held to be entitled to a free transcript for use on appeal from a judgment evicting him from his residence. The Court of Appeals expressly held that the principle of *Griffin* v. *Illinois*, applies to both civil and criminal cases. (424 F. 2d at 901.) See also *Harris* v. *Harris*, 424 F. 2d 806 (D.C Cir. 1970); *Thompson* v. *Mazo*, 421 F. 2d 1156 (D.C. Cir. 1970); *Bynam* v. *Connecticut Commission on Forfeited Rights*, 410 F.2d 173 (2d Cir. 1969).

State courts have likewise applied the *Griffin* principles to civil cases. In *Suber* v. *Suber*, 38 U.S.L.W. 2169 (N.J. Super. Ct. Aug. 25, 1969), the court held that *Griffin* and *Williams* compelled it to order that the state pay the costs of service by publication for an indigent divorce plaintiff. The court stated, ". . . [I]t becomes a subterfuge to provide a procedure for indigents to secure a divorce and then make relief hinge upon payment of a cost which the plaintiff is unable to pay." *Accord*, *Mihans* v. *Munic-*

ipal Court, 7 Cal. App. 3d 479, 87 Cal. Rptr. 17 (1970); *Jeffreys* v. *Jeffreys*, 58 Misc. 2d 1045, 296 N.Y.S. 2d 74 (1968); *Munkelwitz* v. *Hennepin Co. Welfare Dept.*, 280 Minn. 377, 159 N.W.2d 402 (1968); *O'Connor* v. *Matzdorff*, ... Wash. ....., 458 P.2d 154 (1969); *Barber* v. *Gladden*, 210 Ore. 46, 298 P.2d 986 (1956); *Harrington* v. *Harrington*, ... Me. ....., 269 A.2d 310 (1970).

Contrary to the principles expressed by this Court, the State of Illinois does not provide equal access to its appellate court for contract buyers in Forcible Act cases. The perfecting of such appeals depends upon the contract buyer's having sufficient assets to post a substantial appeal bond.

In *Sanks* v. *Georgia*, No. 28, Oct. Term 1970, this Court now has under consideration the question whether the United States Constitution permits a State to require a bond prior to defending an unlawful detainer action. It is appropriate for this Court also to consider whether a State may require a bond as a condition precedent to exercising an appeal in such an action, which the State constitution provides as of right.

III.

THE APPELLATE PROVISIONS OF THE FORCIBLE ACT ADVERSELY AFFECT FUNDAMENTAL RIGHTS OF CONTRACT BUYERS WITHOUT AT THE SAME TIME PROMOTING A COMPELLING STATE INTEREST, CONTRARY TO THE PRINCIPLES ANNOUNCED BY THIS COURT IN SHAPIRO v. THOMPSON, 394 U.S. 618 (1969).

Appellants, by their answers in these cases, sought a judicial determination of their rights to their homes. They also sought a determination of their civil rights under the constitution and statutes of the United States. The Illinois

Supreme Court held that the trial courts were wrong in failing to make these determinations. *Rosewood Corp.* v. *Fisher*, No. 42433 (April 14, 1970) (App. 5). The Illinois Supreme Court, nevertheless, applied the onerous appellate provisions of the Forcible Act to deny relief to these appellants.

In *Shapiro* v. *Thompson*, 394 U.S. 618, 638 (1969), this Court held that where a classification discriminates against or touches upon the exercise of fundamental rights "its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest." In absence of any compelling state interest such a classification violates the Equal Protection Clause. Thus, in *Shapiro*, long residency requirements in state welfare laws inhibiting interstate travel were held to be unconstitutional.

The appellate provisions of the Illinois Forcible Act touch upon the exercise of three fundamental rights of appellants so that application of this stricter test is required:

First, the right to home ownership and security in the home. This is a fundamental right which is put in issue in a Forcible action. Although the Illinois Supreme Court held that appellants were entitled to raise the issues pertaining to ownership of their homes, the appellate provisions of the Forcible Act prevent them from doing so in these cases. The right to home ownership has found recognition in the constitutions of both the United States and the State of Illinois. U.S. Const. Amend. IV; Ill. Const. Art. II, §6. It is of equal importance with the right to the use of one's wages, to which this Court gave special recognition in *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337, 340 (1969).

Second, the right to protection of the civil rights of Negro citizens. The Illinois Supreme Court held that appellants are entitled to claim in these cases that their civil rights were violated by appellees. Only that court's interpretation of the appellate provisions of the Forcible Act prevents their doing so. These fundamental rights are secured not only by three amendments to the United States Constitution, but by many federal statutes. U.S. Const. amend. XIII, XIV, XV; *e.g.*, 42 U.S.C. §§ 1981 et seq.

Third, the right to appeal adverse judgments. The Illinois Supreme Court specifically denied appellants this right. Although there may be no right to appeal under the federal constitution, an appeal as of right is specifically provided by the Illinois Constitution. Ill. Const. Act. VI, §§ 5, 7. The right of appeal is an essential feature of common law judicial procedure. Its importance is recognized in the United States Constitution by the broad appellate jurisdiction conferred on this Court. U.S. Const. art. III, § 2. Once a State has given constitutional recognition to the right to appeal, that right must be accorded the weight which will protect it from invidious discrimination. *See e.g.*, *Griffin* v. *Illinois*, 351 U.S. 12, 18 (1956).

The Forcible Act is the only Illinois statute or rule which provides less than 30 days in which to perfect an appeal or which requires an appeal bond as a condition precedent to an appeal. These discriminatory provisions, which narrowly circumscribed appellants' right to appeal, have affected in a most extreme way the exercise of their fundamental rights to their homes, their civil rights, and an appeal from adverse judgments. As indicated in Part I above, this discrimination is not a necessary feature of the Forcible Act procedure.

This Court should consider whether the State of Illinois has a compelling interest in establishing and enforcing these appellate procedures which have prevented Negro contract buyers from securing the reversal of admittedly erroneous judgments depriving them of their homes.

CONCLUSION

For the foregoing reasons this Court should note probable jurisdiction in these cases and give plenary consideration to the substantial constitutional questions presented.

Respectfully submitted,

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November 21, 1970

APPENDIX

APPENDIX

APPENDIX 1

MOTION FOR LEAVE TO FILE NOTICE OF APPEAL MADE WITHIN SIXTY DAYS AFTER JUDGMENT*

Case Name in Trial Court**	Case No. in Trial Court	Date of Judgment***	Amount of Appeal Bond	Days Writ of Restitution Stayed
Gerald Crane v. Annie Louis Reynolds	69 M1 80261	12/30/69	NONE	30
Cosmopolitan Bank v. Walter & Fay Clay	69 M1 84439	12/23/69	$2,500.00	60
Cosmopolitan Bank v. Donald & Veola Turner	69 M1 84440	12/23/69	$2,500.00	60
Hamilton Corporation v. Samuel & Mascel Sweeney	69 M1 85897	12/19/69	NONE	30
Hamilton Corporation v. John & Sarah Hayes	69 M1 85898	12/19/69	NONE	30
Exchange National Bank v. Margaret Harris	69 M1 86128	12/29/69	NONE	90
Lawson Corporation v. William & Edna Page	69 M1 86271	12/19/69	NONE	30
Lawson Corporation v. James C. & Missouri Streets & Sherman & Shirley M. Streets	69 M1 86296	12/19/69	NONE	30
Hamilton Corporation v. James & Lou Bertha Wright	69 M1 86297	12/19/69	NONE	30
Hamilton Corporation v. Eugene & Velma Smith	69 M1 86450	12/19/69	NONE	60
Hamilton Corporation v. Alma Nailor & Juanita L. Wallace	69 M1 86451	12/19/70	NONE	60
Hamilton Corporation v. Rufus & Annie Griffin	69 M1 86452	12/19/69	NONE	60
Lawson Corporation v. Lee & Lena Mae Porter	69 M1 86672	12/24/69	NONE	30

* The information in this appendix as well as Appendix 2 is derived from the records of the trial court where they were available. Where the court's files could not be found, it was taken from the records kept by the Contract Buyers League.

** Defendants in the trial court, the second named parties in this appendix, are appellants here.

*** The motion to file the notices of appeal was made February 17, 1970.

Case Name in Trial Court	Case No. in Trial Court	Date of Judgment	Amount of Appeal Bond	Days Writ of Restitution Stayed
Independence Homes Inc. v. Lloyd & Eva M. Buggs	69 M1 86673	12/24/69	NONE	30
Lawson Corporation v. Stanley & Mary Belle Jackson	69 M1 86675	12/24/69	NONE	15
Hamilton Corporation v. Lee O. & Annette White	69 M1 86676	12/24/69	NONE	15
Rosewood Corporation v. Harvey & Doris Whitney	69 M1 86678	12/24/69	NONE	45
Rosewood Corporation v. Carl & Sarah P. Taylor	69 M1 86679	12/24/69	NONE	45
Hamilton Corporation v. Walter & Geneva Williams and Jerome Wilson	69 M1 86681	12/29/69	NONE	15
Rosewood Corporation v. Bessie Henderson	69 M1 86682	12/29/69	NONE	15
Hamilton Corporation v. James & Dorothy J. Gipson and Lois F. Brown	69 M1 86684	12/29/69	NONE	15
Larchmont Homes Roland & Betty Sue Bagley	69 M1 86685	12/29/69	NONE	15
Hamilton Corporation v. Willie C. & Emma J. C. Clay	69 M1 86687	12/29/69	NONE	15
Hamilton Corporation v. Hedrick M. & Dorris E. Humphries	69 M1 86688	12/31/69	NONE	15
Hamilton Corporation v. Gread & Naomi D. McKinnis	69 M1 86750	12/22/69	NONE	30
Rosewood Corporation v. Eugene & Alberta McGruder	69 M1 86751	12/23/69	NONE	15
Rosewood Corporation v. Warren & Maud A. Richardson	69 M1 86752	12/23/69	NONE	15
Hamilton Corporation v. Jerry B. & Geneva D. Willingham	69 M1 86753	12/23/69	NONE	15
Hamilton Corporation v. Edward & Freddie Mae Brown	69 M1 86755	12/23/69	NONE	30
Chatham Town Homes, Inc. v. Jimmie L. & Constance Alexander	69 M1 86756	12/22/69	NONE	30

Case Name in Trial Court	Case No. in Trial Court	Date of Judgment	Amount of Appeal Bond	Days Writ of Restitution Stayed
Lawson Corporation v. Robert & Rhoda Williams & George & Maxine Landfair	69 M1 86757	12/22/69	NONE	30
Chatham Town Homes, Inc. v. John H. and Malissa Stigler	69 M1 86758	12/22/69	NONE	15
Hamilton Corporation v. Arthur, Gladys & Nellie Williams	69 M1 86759	12/22/69	NONE	15
Jarvis Corporation v. James D. & Charlotte Williams	69 M1 86760	12/22/69	NONE	15
Hamilton Corporation v. William & Terry Chism	69 M1 86762	12/22/69	NONE	60
Hamilton Corporation v. William & Alice E. Lee	69 M1 87087	12/29/69	NONE	60
Hamilton Corporation v. Gloria & Robert Walker	69 M1 87089	12/29/69	NONE	30
Rosewood Corporation v. Lee & Mildred Miller	69 M1 87099	1/ 5/70	NONE	15
Oak Park National Bank v. Louise Travis Hooks	69 M1 87437	12/31/69	NONE	60
Hamilton Corporation v. William James Ward & Pauline Ward	69 M1 87454	1/ 9/70	NONE	60
Hamilton Corporation v. Lillie & Clarence Millroe	69 M1 87455	1/ 5/70	NONE	15
Rosewood Corporation v. Dennis & Jeffrie L. Rudolph	69 M1 88668	1/14/70	NONE	30
Lawson Corporation v. Eddie & Hilda Dunn	69 M1 88669	1/14/70	NONE	30
Chatham Town Homes, Inc. v. Walter & Helen Nesbitt	69 M1 88671	1/14/70	NONE	30
Lawson Corporation v. Johnnie & Dorothy Hatchett	69 M1 88672	1/14/70	NONE	60
Jarvis Corporation v. Johnnie Ramsey	69 M1 88673	1/14/70	NONE	60
Hamilton Corporation v. James L. & Lucy Zachary	69 M1 88935	1/15/70	NONE	60
American National Bank v. Charles & Charlene Baker	70 M1 50579	1/20/70	NONE	30

APPENDIX 2

MOTION FOR LEAVE TO FILE NOTICES OF APPEAL MADE MORE THAN SIXTY DAYS AFTER JUDGMENT*

Case Name in Trial Court**	Case No. in Trial Court	Date of Judgment***	Amount of Appeal Bond	Days Writ of Restitution Stayed
American National Bank v. Wilson Burton and Edna Burton	69 M1 67643	9/24/69	NONE	75
Lawndale National Bank of Chicago v. Clara Howard	69 M1 78810	10/30/69	$2,500.00	60
Midstate v. Charles & Ella Mae Davis.	69 M1 80613	12/ 3/69	$4,000.00	60
Midstate v. Essex & Alice Alexander	69 M1 80615	12/ 3/69	$4,500.00	60
Cosmopolitan Bank v. Floyd Buckner	69 M1 80841	11/ 4/69	NONE	60
Lawndale Bank v. LeRoy & Mattie Williams	69 M1 83409	11/17/69	$3,200.00	60
Lawndale Bank v. Jack, Hattie & Jessie Palmer	69 M1 83410	11/18/69	$3,700.00	60
Exchange Bank v. Floyd & Isabella Stevens	69 M1 83411	11/18/69	$4,400.00	60
Wallace Reid v. John & Lillian Lane	69 M1 83476	12/ 4/69	$4,000.00	60
Wallace Reid v. John & Lee Kimble	69 M1 83477	12/ 4/69	NONE	60
Rosewood Corporation v. Frank & Emma Collins	69 M1 83481	11/19/69	NONE	60
South Chicago Bank v. Willie and Rose Harris	69 M1 83485	11/25/69	NONE	75
Rosewood Corporation v. Leon & Juanita Halbert	69 M1 83834	12/ 1/69	$3,150.00	50
Lawson Corporation v. Osa Walker	69 M1 83835	12/ 1/69	$3,150.00	50
Cosmopolitan Bank v. John, Annie, Willie & Addie Mae Madison	69 M1 84417	12/ 1/69	NONE	60

* The information in this appendix, as well as Appendix 1, is derived from the records of the trial court where they were available. Where the court's files could not be found, it was taken from the records kept by the Contract Buyers League.

** Defendants in the trial court, the second named parties in this appendix are appellants here.

*** The motion to file the notices of appeal was made February 17, 1970.

Case Name in Trial Court	Case No. in Trial Court	Date of Judgment	Amount of Appeal Bond	Days Writ of Restitution Stayed
Cosmopolitan Bank v. Willie Flowers	69 M1 84418	12/ 1/69	$3,000.00	70 (half sheet: 80)
Lawndale Bank v. Albert & Inez Sams	69 M1 84421	12/10/69	$3,500.00	
Cosmopolitan Bank v. Johnny & Henrietta Brooks & Zecola Wilson	69 M1 84422	12/10/69	$3,500.00	60
Lawndale Bank v. Pearl Woodward	69 M1 84423	12/10/69	$3,000.00	60
Sears Bank v. John, Linnie, Samuel & C. Smith	69 M1 84424	12/10/69	$2,500.00	70
Midstate v. Alfred & Thelma Woolen	69 M1 84656	12/ 3/69	NONE	60
Jon Realty v. Bessie Morris	69 M1 84905	12/17/69	NONE	30
Cosmopolitan National Bank A/T U/T 9246 v. Peggie Thompson, Robert James Thompson & Helen Thompson	69 M1 86024	12/15/69	NONE	30
Cosmopolitan National Bank v. Levi Anderson & Johnnie Mae Anderson	69 M1 86025	12/15/69	NONE	30
Jarvis Homes v. Charles L. & Sharon Boston	69 M1 86131	12/18/69	$4,500.00	30
Lawson Corporation v. Claude & Irmgard Jackson	69 M1 86288	12/18/69	NONE	60
Lawson Corporation v. Robert & Gwendolyn Anderson	69 M1 86289	12/18/69	NONE	60
Hamilton Corporation v. Arthur & Thelma Green	69 M1 86291	12/18/69	NONE	30
Lawson Corporation v. Isaiah & Meleina Perry	69 M1 86292	12/18/69	NONE	30
Lawson Corporation v. Samuel & Birdie Green	69 M1 86293	12/18/69	NONE	30
Hamilton Corporation v. Harold & Delores Thompson	69 M1 86290	12/18/69	NONE	60
Hamilton Corporation v. Otis & Earma Franklin	69 M1 86294	12/18/69	NONE	30
Hamilton Corporation v. Percy & Bertha Gittings	69 M1 86295	12/18/69	NONE	30
Hamilton Corporation v. Lloyd & Beverly Drake	69 M1 86299	12/18/69	NONE	30

APPENDIX 3

IN THE

SUPREME COURT OF ILLINOIS
In Vacation Before May Term 1970

ROSEWOOD CORPORATION, an Illinois Corporation,	)	
Plaintiffs-Appellees,	)	
vs.	)	No. 42433
CHESTER J. FISHER and JULIA M. FISHER, et al.,	)	
Defendants-Appellants.	)	

ORDER

NOW COMES the Court of its own Motion and notes and sets forth the following:

1. On February 3, 1970, on motion of defendants-appellants, this Court entered its order to permit certain appeals listed in Exhibit 1 to the order, to be transferred from the Appellate Court, First District, to this Court and to be consolidated with the above-captioned cause.

2. On February 4, 1970, the appeals so transferred to this Court from the Appellate Court were docketed as No. 42915 under the caption of Lawson Corporation et al. v. Louis Colquitt and Alice Colquitt, et al.

3. On February 17, 1970, on motion of defendants-appellants, certain of the appeals listed in Exhibit 1 to our order of February 3, 1970, above-described, were deleted and withdrawn from said Exhibit.

4. On February 17, 1970, defendant-appellants presented a further motion that:

a. Appeals in cases listed in Exhibit C to the said motion be transferred from the Appellate Court, First District, to this Court, and consolidated with cause No. 42433.

b. Parties defendant in trial court cases listed in Exhibit D to said motion be permitted to file notices of appeal to this Court, and consolidated with cause No. 42433.

c. Appeals listed in Exhibit E to said motion, wherein notices of appeal to this Court had been previously filed, to be consolidated with cause No. 42433.

5. On March 10, 1970, on the motion of defendants-appellants described in paragraph 4, above, this Court entered an order:

a. Allowing the appeals listed in Exhibit C to the said motion to be transferred to this Court from the Appellate Court and to be consolidated with cause No. 42433.

b. Granting leave to the parties defendant in the trial court cases listed in Exhibit D to file notices of appeal to this Court, and consolidating said appeals with cause No. 42433.

c. Consolidating the appeals listed in Exhibit E with cause No. 42433.

Upon reconsideration of the motions, exhibits thereto and the orders of this Court above-described and having determined that a portion of the said motions were improvidently granted and portions of the orders in respect thereto improvidently granted,

IT IS THEREFORE ORDERED as follows:

1. That so much of the order of March 10, 1970, which granted leave to the parties listed in Exhibit D to file notices of appeal to this Court is vacated and set aside, and in such cases in Exhibit D in which notices of appeal have been filed pursuant to our order the appeals are dismissed.

2. That so much of the order of February 3, 1970, as modified by the order of February 17, 1970, which permitted the appeals listed in Exhibit 1 to be consolidated with cause No. 42433 is vacated and set aside.

3. That so much of the order of March 17, 1970, which permitted the appeals listed in Exhibits C and E to be consolidated with cause No. 42433 is vacated and set aside.

4. That the appeals permitted by our orders of February 3, 1970, February 17, 1970 and March 10, 1970, and listed in Exhibit 1, as amended, and in Exhibits C and E, are hereby consolidated in cause No. 42915, under the caption of Lawson Corporation et al v. Louis Colquitt and Alice Colquitt et al.

5. That the parties defendant-appellant in the appeals listed in the aforesaid Exhibit 1, as amended, and in the aforesaid Exhibits C and E, prepare and present to this Court within fourteen (14) days from the entry of this order, or such further extended time as may be granted by this Court:

a. A statement of the issues pending for determination in the consolidated appeal.

b. An accurate listing, or grouping, of the separate cases in the consolidated appeal by issue, so as to permit this Court to know which appeals are being concluded by the determination of each issue.

c. Revised Exhibits 1, C and E, indicating in each case the amount of the respective appeal bonds, whether or not the writ of restitution was stayed and the length of such stay.

6. That the briefs filed in cause No. 42433, Rosewood Corporation v. Fisher, et al., may, insofar as they relate to the issues presented in the appeals now consolidated in No. 42915, Lawson Corporation et al. v. Colquitt et al., stand as the briefs of the parties in the latter case.

ENTER: May ....., 1970.

.....

.....

Justices of the Supreme Court of Illinois

The foregoing order was entered on May 8, 1970.

APPENDIX 4

STATE OF ILLINOIS

OFFICE OF

CLERK OF THE SUPREME COURT

SPRINGFIELD

62706

June 25, 1970

Mr. David C. Roston
Attorney at Law
135 South LaSalle Street
Chicago, Illinois 60603

In re: James B. Alexander, et al., appellants, vs. Hamilton Corporation, et al., appellees. Nos. 42882-42915 Cons.

Dear Mr. Roston:

The Supreme Court today made the following announcements concerning the above entitled cause:

"The motion by appellants for reconsideration of that portion of the order entered May 8, 1970, dismissing the appeals in cases listed in Exhibit D is denied.

The motion by Lawson Corporation, one of appellees, for leave to file a response to appellants' reply concerning statement of issues filed by appellants on May 22, 1970, is allowed." Appellee's response has today been filed.

Very truly yours,

/s/ *Justin Taft*

Clerk of the Supreme Court

JT:gn

cc— Attys. Arnstein, Gluck,
Weitzenfeld & Minow
Attys. Feiwell, Galper & Gordon
Attys. Patner & Karaganis
Atty. Thomas P. Sullivan

APPENDIX 5

Docket Nos. 42433, 42651, 42881, 42882, 42915, and consolidated cases — Agenda 1 — March, 1970.

ROSEWOOD CORPORATION *et al.*, Appellees,

vs.

CHESTER J. FISHER *et al.*, Appellants.

PER CURIAM: We here consider consolidated appeals, prosecuted from judgments for possession entered by the circuit court of Cook County in favor of plaintiffs, which present issues relating to the construction and constitutional validity of the Forcible Entry and Detainer Act (Ill. Rev. Stat. 1967, ch. 57), the distinctive and limited purpose of which is to supply a speedy remedy to permit persons entitled to the possession of lands to be restored thereto. *Wall* v. *Goodenough* (1855), 16 Ill. 415.

General factual background reveals that all the defendants are members of the Negro race who, at various times during the 1960's, entered into installment contracts for the purchase of residential properties. Some were of new construction; others were older properties. The plaintiffs-sellers, for the most part, were developers and builders of residential areas, and others dealing in the sale of real estate. Generally speaking, it appears that the contract prices for new residences were in the vicinity of $25,000. Monthly installments on such contracts ranged from $140 to $160. Defendants, for the most part, complied with their contracts and accumulated equities in their respective properties until 1968 when a general feeling of dissatisfaction arose among the contract buyers stemming from beliefs that they had been overcharged for their properties, and that unfair advantage and discrimination, made pos-

sible by the social and economic problems encountered by members of their race in the purchase of suitable residence properties, had been practiced against them. We do not find, however, nor have we been so advised, that any of the contract purchasers then took any affirmative steps to pursue State remedies for obtaining judicial relief from the allegedly unconscionable contracts. Instead, they appear to have embarked upon a concerted course of self-determination and self-help, for an apparent purpose of securing a modification and renegotiation of their contracts, and stopped making their installment payments. In so doing, they defaulted on their contract obligations and, by the terms of the contracts, exposed themselves to forfeiture of their contract rights and equities and to suits for possession.

Early in 1969 two class actions, predicated on section 3 of the Civil Rights Act of 1866 (42 U.S.C. § 1982; and see: *Jones* v. *Alfred H. Mayer Co.* (1968), 392 U.S. 409, 20 L. Ed. 2d 1189, 88 S. Ct. 2186), were filed in a Federal district court on behalf of contract purchasers of both new and old properties. In those actions it was alleged that the contracts were unlawful and in violation of various constitutional and statutory rights of the purchasers, and the relief requested was that the payment and forfeiture provisions be declared presently unenforcible and that the contracts be rescinded or reformed. We digress to state that these actions are still pending, a panel of three judges having decided on February 11, 1970, at the instance of the contract sellers, to follow a course of abstention until the issues of the present case have been decided.

In May, 1969, the Federal actions withstood motions by the contract sellers to have them dismissed and, commencing at about that point of time, the sellers proceeded with

forcible entry and detainer actions, now numbering in the hundreds, in the circuit court of Cook County. And it is from this background that the principal issues in the present appeal have arisen. As noted, all of such actions have concluded with judgments for possession being entered for the plaintiffs. Some of the defendants perfected appeals; some sought to appeal by filing notice but suffered dismissal for failure to file an appeal bond as required by sections 18 and 19 of our Act (Ill. Rev. Stat. 1967, ch. 57, pars. 19, 20), while still others took no steps toward an appeal. Where appeals were not perfected, evictions reaching mass proportions have followed.

During September, 1969, some 370 contract buyers filed a declaratory judgment action in the circuit court of Cook County for a declaration that certain defenses which were being denied to defendants in the actions for possession could be advanced and litigated, or an alternative declaration that the Forcible Entry and Detainer Act was unconstitutional if it was to be construed as meaning that such defenses could not be advanced and litigated. This action, the caption of which was *Alexander et al.* v. *Hamilton Corporation et al.*, was dismissed on motion of the defendants thereto and the plaintiffs perfected an appeal to the appellate court. We have since allowed the appeal to be transferred to this court and have caused it to be consolidated with appeals taken from the forcible entry and detainer actions.

The first of the appeals from the judgments for possession to reach this court was in the case of Rosemont Corporation, plaintiff-appellee versus Chester J. Fisher and Julia M. Fisher, defendants-appellants. And although notice of appeal was filed May 23, 1969, it was not until January 21, 1970, that the record on appeal was filed in this

court. In addition to constitutional questions, this appeal, as shall subsequently be discussed in greater detail, also raised an issue, involving a construction of the Forcible Entry and Detainer Act, as to whether the trial court erred in refusing to permit certain defenses relied upon by defendants to be pleaded and heard. Thereafter, on January 22, 1970, we permitted the appeal in Lawson Corporation v. Jackson to be transferred to this court from the appellate court and to be consolidated with Fisher, inasmuch as a similar issue relating to defensive pleadings was involved. By subsequent orders continuing up to the time this court convened for its March, 1970, Term, we caused some 156 additional appeals to be consolidated with Fisher either by permitting their transfer from the appellate court, or by granting defendants who had suffered adverse judgments in the trial court to file notices of appeal to this court. In all of these additional cases, as in Fisher and Jackson, there is involved a construction of our Act insofar as it relates to the pleadings of defendants.

Section 2 of the Forcible Entry and Detainer Act provides in pertinent part that a person entitled to possession of lands may maintain an action and be restored to possession: "Fifth, When a vendee having obtained possession under a written or verbal agreement to purchase lands or tenements, and having failed to comply with his agreement, withholds possession thereof, after demand in writing by the person entitled to such possession." (Ill. Rev. Stat. 1967, ch. 57, par. 2.) Section 5 thereafter provides that a person entitled to possession may initiate an action by filing a complaint in the circuit court of the county where the premises are situated and then continues: "The defendant may under a general denial of the allegations of the complaint give in evidence any matter in defense of the

action. *No matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise*: * * * ." (Emphasis added.) But it is clear that matters germane to the distinctive purpose of the action may be introduced by a defendant by way of counterclaim or otherwise, inasmuch as section 11 of the Act directs that: "The provisions of the Civil Practice Act, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder in courts, except as otherwise provided in this Act." Indeed, it was not until the Civil Practice Act was adopted that the words emphasized in the quotation from section 5, appearing above, were added to the section. (*Cf.* Ill. Rev. Stat. 1933, ch. 57, par. 5, with Ill. Rev. Stat. 1935, ch. 57, par. 5.) And so far as the distinctive purpose of the Forcible Entry and Detainer Act is concerned it has been accurately and succinctly stated in *Bleck* v. *Cosgrove*, 32 Ill. App. 2d 267, 272 that: "Forcible entry and detainer is a summary statutory proceeding to adjudicate rights to possession and is unhampered and unimpeded by questions of title and other collateral matters not directly connected with the question of possession."

In the Fisher and Jackson cases, whose pleadings are treated upon severally and taken as being representative of those in all the possession cases to which this appeal has been extended, the defendant sought to introduce by way of answer, counterclaim or affirmative defense, various matters going to the validity and enforcibility of the contracts upon which plaintiffs based their claim of a right to possession. Included were allegations that the contracts were unconscionable and unenforcible; that they were usurious; that they were extracted and induced by fraud;

and that they were in violation of the civil and various constitutional rights of the defendants. And while a contention is made by plaintiffs that such matters were improperly and insufficiently pleaded, that issue is not open to our consideration. It is well settled that the sufficiency of a pleading may not be attacked for the first time in a court of review. (*McFail* v. *Braden*, 19 Ill.2d 108, 120.) On motion of plaintiffs, the trial court struck the defensive pleadings challenging the validity and enforcibility of the contracts on the ground that they were not germane to the issue of right to possession and therefore prohibited by section 5 of the Act. Defendants now contend that such a construction of the section causes the Act to violate constitutional guarantees of equal protection and due process of law, and various other provisions of our State and Federal constitutions. It is broadly asserted, too, that such a construction of the Act in its application to contract purchasers of land causes it to be an arbitrary and discriminatory measure against poor persons and members of minority groups who are unable to obtain mortgage financing when they purchase residences. In the view we take, however, these constitutional claims are not reached and need not be decided. See: *Bismarck Hotel Co.* v. *Petrikko*, 21 Ill.2d 481; *City of Detroit* v. *Gould*, 12 Ill.2d 297.

Limiting ourselves to a consideration of the act only so far as it applies to contract purchasers of land, this case is, so far as we can ascertain, one of first impression in this court. It is our opinion that the defenses going to the validity and enforcibility of the contracts relied upon by the plaintiffs were germane to the distinctive purpose of the forcible entry and detainer actions and were improperly stricken. That purpose, to repeat, is to restore possession to one who is entitled to the right of possession. "Ger-

mane" has been judicially defined as meaning "closely allied," and is further defined in Webster's New Twentieth Century Dictionary, p. 767, as meaning: "closely related; closely connected; relevant; pertinent; appropriate." Where as here, the right to possession a plaintiff seeks to assert has its source in an installment contract for the purchase of real estate by the defendant, we believe it must necessarily follow that matters which go to the validity and enforcibility of that contract are germane, or relevant, to a determination of the right to possession. This is particularly true for two reasons. First, because a contract buyer becomes the equitable owner of the property upon execution of an installment contract (*Shay* v. *Penrose,* 25 Ill.2d 447, 449), and thus by such an action may be stripped of his equitable ownership as well as possession; second, the contract purchaser is faced not only with the loss of possession, but, unlike a tenant, trespasser or squatter, is likewise faced with the loss of the equity accumulated by payments made on the contract. Here, for example, the Fishers had paid approximately $15,000 toward satisfaction of their total contract obligations. On the other side of the coin, a contract seller claiming and seeking to enforce a claimed right of possession should not be permitted to prevail on the basis of such contract so long as its validity and enforcibility is questionable under the law. Should a contract purchaser not be permitted to defend upon the very contract upon which the seller relies, in our judgment the result could be, as argued, a direct denial of constitutional rights and an indirect denial of civil rights. We believe that contract buyers may plead equitable defenses and be given equitable relief if it is established that the contracts are unconscionable or in violation of civil rights as here contended. *Cf. Horner* v. *Jamieson,* 394 Ill. 222; *Stein* v. *Green,* 6 Ill.2d 234.

Section 11 of the Forcible Entry and Detainer Act provides that the rules of practice and pleading in other civil cases shall apply to detainer actions, and, as previously noted, contemporaneously with the enactment of the Civil Practice Act section 5 of the detainer act was amended in terms which permits matters germane (*i.e.*, closely allied; closely related, closely connected; appropriate), to be introduced by a defendant. The fusion of the practice and procedure in suits at law and in equity accomplished by the Civil Practice Act is, in our opinion, sufficient to permit necessary equitable relief in these proceedings, rather than to force upon defendants a separate proceeding where the same relief will be forthcoming. *Cf. Ellman* v. *De Ruiter*, 412 Ill. 285; *Nikola* v. *Campus Towers Apartment Bldg. Corp.*, 303 Ill. App. 516.

A necessary concomitant of the seeking of relief through equity is a willingness to do equity. This is fundamental in equity jurisprudence. The invocation by defendants of equitable defenses necessarily requires that the trial court exercise its discretion by ordering such payments as the court deems proper and any other equitable arrangements protective of the property and the interests of all parties during the pendency of the litigation.

It does not escape us that the construction we have placed upon the act may interfere with the summary aspects of the remedy, when it is invoked against contract purchasers. But the right of such purchasers to be heard on relevant matters, and to be secure in their constitutional rights, as well as the desirable purpose of preventing a multiplicity of suits, is, and must be, superior to the desire to provide a speedy remedy for possession.

Section 3 of our Act deals with the demand for possession which must precede the filing of a complaint for possession and, so far as pertinent at this time, provides the

following: " * * * in case there is a contract for the purchase of such lands or tenements, notice that a proceeding under the provisions of this Act is to be instituted shall be given to the purchaser under such contract at least thirty days prior to the institution of such proceeding, * * *. Which demand for possession *maybe* in the following form:

> To .....
>
> I hereby demand immediate possession of the following described premises: (describing the same.)

Which demand shall be signed by the person claiming such possession, his agent or attorney." Ill. Rev. Stat. 1967, ch. 57, par. 3; emphasis added.

It is the contention of the defendant Fisher that the form of demand permitted violates the requirements of due process and equal protection for reason that it fails to give persons sought to be dispossessed adequate notice of the claims against them. While the authorities upon which Fisher relies to support this theory are of doubtful application to a demand, as distinguished from a pleading, an examination of the record reveals that he is in no position to raise this objection. The plaintiff caused to be served on defendant both a "Demand For Strict Compliance With Contract And Warning Notice Pursuant To Forcible Entry and Detainer Act" (February 12, 1969), and a "Notice Of Forfeiture And Demand For Immediate Possession" (March 26, 1969), which were couched in terms which adequately and completely informed defendant of the claim against him. Defendant thus lacks standing to attack the form suggested by the act. It has been stated many times that this court "will not determine the consti-

tutionality of the provisions of an act which do not affect the parties to the cause under consideration, or where the party urging the invalidity of such provisions is not in any way aggrieved by their operation." *Schreiber* v. *County Board of School Trustees of Peoria County*, 31 Ill. 2d 121, 125, and cases there cited.

Supported only by a reproduction of the minute sheet compiled by the various trial judges, the plaintiff in the Jackson case has made a motion in its brief for the dismissal of that appeal on the ground that defendants failed to file their appeal bond within 5 days from the rendition of judgment as required by section 18 of the Forcible Entry and Detainer Act (Ill. Rev. Stat. 1969, ch. 57, par. 19; see: *Long* v. *Long*, 51 Ill. App. 2d 401.) While we believe the minute sheet may be interpreted as showing that the delay in filing occurred with leave of court, it is enough to say that the motion will be denied for failure to comply with Rule 361 of this court. With regard to motions in reviewing courts, it is there stated: "When the motion is based on facts that do not appear of record it shall be supported by affidavit." (43 Ill.2d R. 361) The minutes of a trial judge do not constitute a record of the proceedings of the court (*Mitchell* v. *Van Scoyk*, 1 Ill.2d 160, 175; *Garnea* v. *Seeley*, 66 Ill. 500; *McCormick* v. *Wheeler, Mellickel Co.*, 36 Ill. 114), and the requisite affidavit to support plaintiff's motion has not been filed.

Accordingly, and for the reasons stated, the judgments in the Fisher and Jackson cases are reversed, and the causes are remanded to the circuit court of Cook County for further proceedings in accordance with the views expressed in this opinion. The same disposition is made in those appeals which have been transferred to this court and consolidated with Fisher, wherein notice of appeal and

appeal bond were filed within the 5-day period required by the Act and wherein defensive pleadings germane to the issue were stricken.

This leaves for consideration the balance of the 156 appeals from judgments for possession wherein we permitted the filing of notices of appeal to this court and consolidated with Fisher. Upon reconsideration, we conclude that consolidation was improvident. While all present issues relate to the construction or validity of the appeal and bond provisions of the Act, they were, for the most part, allowed to be brought to this court on the eve of oral argument in the Fisher and Jackson cases and subsequent to the time that briefs had been filed. We therefore hold these appeals under advisement and, under the circumstances, hold that the parties thereto may file such motions and briefs as they deem desirable in accordance with the regular briefing schedule of this court computed from the date of filing of this opinion. The same disposition is made of Independence Homes, Inc. v. Robert Durham, wherein an appeal was reinstated by an order of March 10, 1970, and the cause consolidated with Fisher.

We further conclude that the appeal in Alexander, the declaratory judgment action, was improvidently consolidated with Fisher. It, too, will be held under advisement.

Judgments either reversed and remanded, with directions; or held under advisement.

Mr. Justice Schaefer took no part in the decision of this case.

APPENDIX 6

In The

SUPREME COURT OF THE STATE OF ILLINOIS

Rosewood Corporation, Plaintiff-Appellee,	)	
v.	)	No. 42433
Christen J. Fisher and Julia M. Fisher, et al., Defendants-Appellants.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that the appellants listed in Exhibit D to Appellants' Motion of February 17, 1970, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of Illinois, dismissing appellants' appeals from the judgments entered against them in forcible entry and detainer proceedings, entered herein on May 8, 1970.

This appeal is taken pursuant to 28 U.S.C. § 1257 (2).

/s/ *Thomas P. Sullivan*

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Attorneys for appellants

Appellants filed the foregoing Notice of Appeal in the Supreme Court of the State of Illinois on July 23, 1970, together with proof of service, and served copies upon all parties of record by mail on the same day.

APPENDIX 7

Docket Nos. 42882, 42915—Agenda 1—March, 1970.

JAMES B. ALEXANDER *et al.*, Appellants, vs. HAMILTON CORPORATION *et al.*, Appellees.

PER CURIAM: The consolidated cases here considered are those held under advisement in *Rosewood Corporation v. Fisher*, —— Ill.2d ——, and present questions going to the constitutionality of section 18 of the Forcible Entry and Detainer Act, insofar as it provides that: "* * * notice of appeal and bond must be filed within 5 days from the rendition of the judgment [for possession] * * *." Ill. Rev. Stat. 1967, ch. 57, par. 19.

Once again, as in *Rosewood*, the adversaries are defendants who purposely defaulted on their contracts for the purchase of residence properties, and plaintiffs are sellers for whom judgments of possession were entered by the circuit court of Cook County in ensuing forcible entry and detainer proceedings. Defendants here, for the most part, filed timely notices of appeal, but subsequently suffered dismissal of their appeals by the trial court, on motions of plaintiffs, due to their failure either to file appeal bonds which had been fixed by the trial court, or to file them within the 5-day statutory period. The amount of the bonds set was, on the average, the total of the individual defendant's contract arrearage at the time the judgment was entered, plus the amount of payments which would become due during the next 12-month period the time calculated to be necessary to complete an appeal. Authority therefore is found in section 19 of the Act which provides, *inter alia*, that the conditions of the bond of a defendant shall be that he will: "(a) prosecute such appeal with effect; * * * and (c) in case the judgment from which

the appeal is taken is affirmed or appeal dismissed; pay all damages and loss which the plaintiff may sustain by reason of the withholding of the premises in controversy, and by reason of any injury done thereto during such withholding, until the restitution of the possession thereof to the plaintiff, together with all costs that may accrue; which said bond shall be in sufficient amount to secure such rent, damages and costs, * * *." (Ill. Rev. Stat. 1967, ch. 57, par. 20.) The present appeals have been prosecuted from the orders dismissing the appeals and, with one exception to be noted, such orders of dismissal are sufficient to give defendants standing to present the constitutional issues they seek to raise. *Cf. Air Line Stewards and Stewardesses Ass'n* v. *Quinn*, 35 Ill.2d 106; *Burkel* v. *Reliance Bank and Trust Co.*, 367 Ill. 196.

From the time of its enactment the courts of review in this State have consistently and uniformly construed section 18 to mean that the filing of the bond, as well as notice of appeal, is jurisdictional, and have dismissed appeals taken by defendants for failure to file bonds as the section prescribes. (*Fairbank* v. *Strecter*, 142 Ill. 226; *Saxton* v. *Curley*, 112 Ill. App. 450; *Veach* v. *Hendricks*, 278 Ill. App. 376; *Prasnikar* v. *Harmeling*, 329 Ill. App. 341; *Kruse* v. *Ballsmith*, 332 Ill. App. 301; *Chicago Housing Authority* v. *Frank*, 335 Ill. App. 456; *Davis* v. *Moore*, 1 Ill. App. 2d 296; *Sawyer* v. *Sholem*, 2 Ill. App. 2d 167; *see Lake Shore Drive Trust* v. *Wickham*, 18 Ill. App. 2d 184; *Long* v. *Long*, 51 Ill. App. 2d 401; *Johnny Bruce Co.* v. *Fung*, 123 Ill. App. 2d 396.) Emanating from *Fairbank*, the basis for these decisions has been that the right of appeal is statutory and can be availed of only by complying with the substantial requirements of the statute authorizing it. Defendants now challenge this construction asserting broadly that there is

neither constitutional nor statutory authority for requiring the posting of a bond as a prerequisite to an appeal.

As to the element of statutory authority, however, this contention is immediately and conclusively dispelled by the clear and unambiguous language of section 18 which states that a bond "must" be filed in order to perfect an appeal. We cannot say that the legislature did not mean what the plain language of a statute imports. (*Bismarck Hotel Co. v. Petrike*, 21 Ill.2d 481.) Furthermore, section 18 must be read with section 19 and when that is done the legislative intent that the filing of a bond is a necessary condition precedent to the prosecution of an appeal from a judgment of possession is even clearer. Section 19 is manifestly designed to protect the party who has been deemed to be entitled to possession of the controverted premises and recognizes two things. First, that an appealing defendant continues in the possession and use of the premises pending appeal, and second that a party who has successfully demonstrated the right of possession is entitled to be secured against financial loss and damage while the unsuccessful litigant continues to use and occupy the premises during the period of the appeal. To ignore section 19, as defendants would have us do, would defeat its patent object and intent. *Fairbank v. Streeter*, 142 Ill. 226.

Apparently relying on that part of section 7 of article VI of the Illinois constitution, as amended with effect from January 1, 1964, which states: "In all cases, other than those appealable directly to the Supreme Court, appeals from final judgments of a Circuit Court lie as a matter of right to the Appellate Court", defendants contend that a statute requiring the posting of a bond as a prerequisite to an appeal is in derogation of such constitutional guarantee.

But defendants are mistaken in their belief that the constitutional language relied upon is self-executing. When confronted with a comparable theory in *Drainage Commissioners of Town of Niles* v. *Harms*, 238 Ill. 414, this court, in language that still obtains despite the subsequent amendment of the judicial article, stated at page 420: "A constitutional provision authorizing an appeal requires legislation to make it effective. A party with nothing but the constitution as his authority could not bring a case to this court by appeal, for the reason that the terms, conditions and rules under which an appeal may be taken and the cause transferred to the court exercising appellate jurisdiction must be provided by statute. It is for this reason that it has been so often said that the right to an appeal is strictly statutory, and that a party, to avail himself of the right, must conform to the conditions prescribed by the statute. The right is conferred by statute in the sense that it can only be exercised by complying with statutory conditions, such as giving bond and filing authenticated copies of the record within the time specified. (*Coal Belt Electric Railway Co.* v. *Kays*, 207 Ill. 632; *Hileman* v. *Beale*, 115 *id.* 355; *Loomis* v. *Hodson*, 224 *id.* 147; *Merritt* v. *Crane Co.*, 225 *id.* 181.)" In *People* v. *Nordstrom*, 37 Ill.2d 270, decided since the 1964 amendments to the judicial article, this principle of constitutional construction was reaffirmed when we said at page 273: "The constitutional right to an appeal from final orders of a trial court must of course be perfected within the procedural fabric established by statute and rule. (*Bradford Supply Co.* v. *Waite*, 392 Ill. 318; *George* v. *George*, 250 Ill. 251.)" It necessarily follows that statutes, such as section 18, which implement the right of appeal conferred by section 7 of article VI, are not in violation of its provisions.

Contention is also made by defendants that section 18, a legislative enactment, violates the exclusive power to make rules governing appeals vested in this court by sections 5 and 7 of the Illinois constitution, as amended. This contention, too, is without merit, and was recently rejected in *Spring* v. *Little*, Nos. 41730-39. As there pointed out, Rule 1 of this court (Ill. Rev. Stat. 1967, ch. 110A, par. 1) clearly adopts and leaves in full force and effect the provisions relating to notice of appeal and compulsory bond in the Forcible Entry and Detainer Act.

Defendants next urge that the application of the bond requirements of sections 18 and 19 to poor persons, who are financially unable to post bonds, has the effect of denying them access to State courts of review and therefore serves to deny them due process and equal protection of law. This question was not raised and passed upon in the trial court, nor can it be said to have arisen as the result of the dismissal of the appeals, and neither does it appear that any of the defendants had defended in the trial court, or sought to defend, as poor persons. (See: Ill. Rev. Stat. 1967, ch. 33, par. 5; Ill. Rev. Stat. 1967, ch. 110A, par. 298) In what must be viewed as a belated effort to create standing to raise the constitutional point they seek to make, defendants have, however, filed so-called "poverty affidavits" in this court. We say "so-called" because in our opinion the affidavits, with few if any exceptions, fail to establish defendants as indigent persons. Indeed, one of them claiming to be impoverished admits to a take-home pay of $1,250 per month, savings of $3,000, and the ownership of two automobiles, including a 1970 Cadillac. Plaintiffs contend, and we believe with complete justification, that this constitutional question has not been properly raised and preserved for review. (*Interstate Bakeries Corp.* v. *Teamsters Local 737*, 31 Ill.2d 317.) But we believe that the obvious

relevancy of the issue, the public interest, the extreme likelihood of recurrence and the desirability of an authoritative determination for future guidance requires that consideration be given to its merits. *Cf. People ex rel. Wallace* v. *LaBrenz*, 411 Ill. 618; *In re Estate of Brooks*, 32 Ill.2d 361.

In support of their claim that the appeal bond requirements of the Forcible Entry and Detainer Act cannot constitutionally be applied to poor persons, defendants rely upon the broad principle encompassed by the equal-protection clause which was first stated in *Griffin* v. *Illinois* (1956), 351 U.S. 12, 19, 100 L.Ed. 891, 76 S.Ct. 585, 591, in this way: "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has." Based upon this concept it was held in *Griffin* that indigent defendants in Illinois criminal cases must be furnished with free trial transcripts to permit them to enjoy the same right to appeal as wealthy defendants. Spurred on by this and other landmark cases, such as *Douglas* v. *California* (1963), 372 U.S. 353, 9 L.Ed. 2d 811, 83 S.Ct. 814 and *Harper* v. *Virginia State Board of Elections* (1966), 383 U.S. 663, 16 L. Ed. 2d 169, 86 S.Ct. 1079, the trend of judicial decision, and legislative enactment as well, has been to implement the mandate of *Griffin*, whether the proceedings be civil or criminal, by removing obstacles which had theretofore effectively served to deny poor persons full access to the legal system. In the recent case of *Lee* v. *Habib*, (D.C. cir. 1970), 424 F.2d 891, for example, an indigent defendant was held to be entitled to a free transcript for use in an appeal from a judgment of eviction, the court stating that "* * * a litigant's ability to pay for a transcript bears no relation to the justice of his position in a suit against him for eviction." (p. 901.) Comparably in *Pasquarella* v. *Santos*, (1st cir. 1969), 416 F.2d 436,

a rent delinquency proceeding, it was held that a poor tenant could remove the case to a Federal court without having to post the usual removal bond required by rule. But on the other hand, the court in *Boddie* v. *Connecticut*, (D.C. Conn. 1968), 286 F.Supp. 968, upon being confronted with a class action on behalf of Connecticut women receiving State welfare assistance, declined to hold that equal protection required that such women be permitted to proceed in divorce actions without payment of fees or costs; however, review in *Boddie* is now pending in the Supreme Court, 395 U.S. 974, 26 L.Ed. 2d 788, 89 S.Ct. 2138, probable jurisdiction noted.

We thus entertain no doubt that the principle of equal protection evolving from *Griffin* may have application in civil cases. But the problem, as noted by the courts in *Lee* and *Boddie*, (see also *Barber* v. *Gladden*, 210 Ore. 46, 298 P.2d 986,) is to determine the extent to which the principle must, or should be, applied. In this regard, the civil cases which have come to our attention give little aid in the resolution of the question confronting us here. All have involved situations where fees and costs due a governmental entity as the price of proceeding with litigation have been waived as to poor persons, or where governmental entities have been required to bear the expense of providing the means and representation necessary for poor persons to avail themselves of trial and appellate review on the same footing with other litigants. None of them approach the situation here, where defendants seek waiver of bonds designed to protect the property rights of their adversaries while defendants remain in possession pending appeal, and where the waiver would, in effect, impose the financial obligation of the defendants upon private citizens. The pitfalls attendant to the waiver of security bonds in the nature of those required by our Act were recognized in

Pasquarella where the court had no difficulty in determining that a removal bond was in fact a cost of proceeding which could be waived, but continued on to say: "We would be reluctant to extend the waiver of Section 1915(a) to situations, such as the issuance of a preliminary injunction, in which security is required to protect a party against damages as well as costs. See F. R. Civ. P. 65(c). Such a waiver might even raise issues of due process." (416 F.2d at 437.) The same would be true, we believe, if we were to extend the *Griffin* principle to defendants and, pending appeal, deprive plaintiffs of both the possession of the properties they have been adjudged to be entitled to possess, and the security against loss and damages contemplated by sections 18 and 19 of the Forcible Entry and Detainer Act.

Further persuasive of a conclusion that the expanded concepts of equal protection relied upon do not require a waiver of the security bonds in question are the circumstances surrounding *Williams* v. *Shaffer* (1967), 385 U.S. 1037, 17 L.Ed. 2d 683, 87 S.Ct. 772. There, as here, were eviction proceedings to remove defendants from their homes and a Georgia statute which provided a summary remedy for possession. Among other things, the statute directed that a defendant, in order to remain in possession and obtain a trial, must "tender a bond with good security, payable to the landlord, for the payment of such sum, with costs, as may be recovered against him on the trial of the case." (385 U.S. at 1037-38, 17 L.Ed. 2d at 684, 87 S.Ct. 772.) The landlord obtained a dispossessory warrant after filing an affidavit that the defendants had failed to pay rent, whereupon defendants attempted to file counter-affidavits raising certain defenses, together with affidavits that they were not able to post security due to their indigency. The latter affidavits were apparently rejected and

defendants then petitioned to a higher court attempting to arrest the summary eviction. But this petition was denied, the action dismissed and the defendants summarily evicted. On appeal, the Supreme Court of Georgia held that the case was moot because defendants had been evicted. (222 Ga. 334, 149 S.E.2d 668.) Defendants then filed a petition for a writ of *certiorari* in the Supreme Court of the United States, but such relief was denied. Two justices, however, joined by another who merely noted that the writ should be granted, vigorously dissented and expressed the opinion that the security bond provision of the Georgia statute violated the equal protection clause by patently discriminating against the poor. 385 U.S. 1037, 17 L.Ed. 2d 683, 87 S.Ct. 772.

We are aware that the denial of a petition for a writ of *certiorari* carries with it no implication whatever regarding the court's views on the merits of the case. (*Maryland* v. *Baltimore Radio Show* (1950), 338 U.S. 912, 94 L.Ed. 2d 562, 70 S.Ct. 252; *House* v. *Mayo* (1945), 324 U.S. 42, 89 L.Ed. 2d 739, 65 S.Ct. 517.) However, in light of the dissent squarely raising the issue, we think it permissible to see in the denial in *Williams* a manifestation by the majority of the court that the *Griffin* principle does not reach into civil cases to the extent here sought. Surely if a statute which requires a security bond to be tendered as a condition precedent to trial is deemed to raise no question of a denial of equal protection to poor persons, our statute requiring such a bond as a prerequisite to an appeal is even less susceptible to a charge of unconstitutionality. Accordingly, we conclude that the security bond requirements of section 18 and 19 may be constitutionally applied to indigent persons.

Because litigants desiring to appeal in other types of actions are allowed 30 days in which to file a notice of appeal, (Ill. Rev. Stat. 1969, ch. 110A, pars. 303 and 307,) it is

next contended by some of the defendants adversely affected that the 5-day notice of appeal provision of section 18 operates to deny equal protection of law to forcible entry and detainer litigants. Equal protection of law does indeed require that the rights of every person subjected to State legislation must be governed by the same rule of law under similar circumstances. (*Grasse* v. *Dealer's Transport Co.*, 412 Ill. 179.) But the equal-protection clause of the fourteen amendment does not prevent a State from adjusting its legislation to differences in situation, and a statute effecting a classification of persons or objects is not unconstitutional merely because it affects one class and not another, provided it affects all members of the same class alike and so long as the classification is not arbitrary and founded upon some substantial difference in circumstances or condition properly related to the classification. (*Thorp* v. *Mahin*, 43 Ill.2d 36; *Department of Business and Economic Development* v. *Phillips*, 43 Ill.2d 28; *Edelen* v. *Hogsett*, 44 Ill.2d 215; *McGinnis* v. *McGinnis*, 289 Ill. 608.) Treating upon the case of a tenant, as distinguished from a contract buyer, we have recently decided in *Spring* v. *Little*, Nos. 41730 and 41739 (cons.), that there are valid and justifiable reasons for the legislative differentiation between the appeal requirements in forcible entry and detainer proceedings and those in other types of litigation, and found that section 18 does not infringe upon the constitutional guarantees of due process and equal protection of the law. What was said there has equal application here. The legislature could reasonably determine that eviction proceedings against contract buyers, for the most part, result from their failure to pay contract installments, and that to permit a defaulting buyer to have a 30-day appeal period would be to permit him another month of

occupancy and possession without charge. And, on the other side of the coin, the party found to be entitled to possession is denied the money that sale or rental to another might bring and, in effect, is restrained from alienating the property in question while the possibility of an appeal is hanging in the balance. And perhaps to a greater degree than in the case of a tenant, the legislature could properly consider that a longer period in which to file a notice of appeal and security bond in forcible entry and detainer proceedings could result in abuses and irretrievable loss. Maintenance and the making of necessary repairs could be abandoned in the face of the judgment of possession. Fixtures could be removed, insurance could be cancelled if the obligation to provide a policy is on the buyer, and it is not inconceivable that a vengeful defendant could misuse and damage the premises. The legislature could therefore conclude that, in proceedings of this nature, there is a need for expeditious review and for promptly securing the party against whom review is sought against loss and damage. Under the circumstances, we cannot say that the statutory distinctions between forcible entry litigants and those in other actions are "purely arbitrary," or that they create an "invidious discrimination." *Morey* v. *Doud*, 354 U.S. 457, 463, 1 L.Ed. 2d 1485, 77 S.Ct. 1344; see also 16A, C.J.S., § 559.

On a theory that the trial court lost jurisdiction of these cases when notices of appeal were filed, (*cf. City of Chicago* v. *Myers*, 37 Ill.2d 470), it is also contended by defendants that the trial court was without the power or authority to dismiss their appeals. This contention is also without merit. By the clear language of section 18, which has been adopted by Rule 1 of this court, the jurisdiction of the re-

viewing court could not attach until both notice of appeal and bond were filed. *Chicago Housing Authority* v. *Frank*, 335 Ill. App. 456.

Accordingly, and for the reasons stated, the orders of the circuit court of Cook County, dismissing the appeals for failure to comply with sections 18 and 19, are affirmed.

Orders affirmed.

We have also taken with the foregoing cases a motion of still other defendants, against whom judgments of possession were entered in the circuit court, who ask that we reconsider an order wherein we vacated a prior order permitting such defendants to bring appeals to this court. These defendants, however, filed neither notice of appeal nor bond in the trial court, nor made any effort to do so. Our order permitting them to file appeals in this court was improvidently entered, and the motion for reconsideration must be denied. Sections 18 and 19 of the Forcible Entry and Detainer Act represent an express and studied legislative direction as to the manner of perfecting an appeal in such actions and we are not at liberty to ignore them. *Cf. People* v. *Capoldi*, 37 Ill.2d 11.

Motion for reconsideration denied.

Mr. Justice Schaefer took no part in the consideration or decision of this case.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. 904

WILSON BURTON, ET AL.,
Defendants-Appellants,

vs.

AMERICAN NATIONAL BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST No. 16963,
Plaintiff-Appellee.

(Together With 80 Other Cases.)

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION PURSUANT TO RULES 16(b) AND 16(d) TO DISMISS APPEAL.

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IN THE

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OCTOBER TERM, 1970.

No. 994.

WILSON BURTON, ET AL.,
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vs.

AMERICAN NATIONAL BANK AND TRUST COMPANY, AS TRUSTEE UNDER TRUST NO. 16963,
Plaintiff-Appellee.

(Together With 80 Other Cases.)

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION PURSUANT TO RULES 16(b) AND 16(d) TO DISMISS APPEAL.

Hamilton Corporation, Lawson Corporation, Independence Homes, Inc., Rosewood Corporation, Larchmont Home Development Co., Chatham Town Homes, Inc. and Jarvis Homes, Inc., Plaintiffs-Appellees in 55 of the 81 cases sought to be appealed to this Court, move pursuant to Rule 16(b) of the Rules of the Supreme Court of the United States to dismiss the appeal on the ground that the Federal

question sought to be reviewed was neither raised in nor passed on by the Supreme Court of Illinois and because no substantial Federal question is presented and further move pursuant to Rule 16(d) of the Rules of the Supreme Court of the United States to dismiss the appeal on the ground that the issues allegedly involved are moot.

The Constitutionality of the Appeal Requirements of the Forcible Entry and Detainer Act of Illinois Was Neither Raised in nor Passed on by the Supreme Court of Illinois in any of These Cases.

Appellants admit at page 1 of their jurisdictional statement that there is no opinion below in these cases. Actually, no decision was rendered in these 81 cases by the Supreme Court of Illinois other than an order dismissing the appeals for failure to comply with Notice of Appeal requirements. Moreover, these Appellants did not challenge such appeal requirements under either the United States Constitution or the Constitution of the State of Illinois in either the trial court or the Supreme Court of Illinois. Their failure to raise the constitutional issues in the trial courts would have precluded their being raised in the Supreme Court of Illinois, *Pickus* v. *Board of Education*, 9 Ill. 2d 599, 610; *The People* v. *Luckey*, 42 Ill. 2d 115, 117; *Shilvock* v. *Retirement Board of Policemen's Annuity and Benefit Fund of Chicago*, 375 Ill. 68.

It is patently clear that these Appellants did not make any claim in the Supreme Court of Illinois that such appeal requirements were unconstitutional as they claim to have done by "their" brief on appeal to the Illinois Supreme Court on February 10, 1970 (page 2 of jurisdictional statement). The fact is these Appellants requested the Supreme Court of Illinois to grant them leave to file notices of appeal in that court on February 17, 1970 (Appellants' Ap-

pendix, page 7, paragraph 4b). That motion was not allowed by the Supreme Court of Illinois until March 10, 1970 (Appellants' Appendix, page 7, paragraph 5b). Hence, it is clear they did not even seek leave to appeal to the Supreme Court of Illinois until seven days after the brief was filed by other litigants, who are not parties to these purported appeals, and that they had no right to file any brief with the Supreme Court of Illinois until a month after that brief was filed by such other litigants. The decision of the Supreme Court of Illinois in *Rosewood Corporation, et al.* v. *Chester J. Fisher, et al.* (Appellants' Appendix 5) rendered April 15, 1970, explicitly refutes Appellants' claim in this Court that such issues were raised by them in the Supreme Court of Illinois. In the *Fisher* decision the court said, Appellants' Appendix, page 21, that these cases were allowed to be brought to this court on the eve of oral argument in the *Fisher* and *Jackson* cases and subsequent to the time that briefs had been filed. The Supreme Court of Illinois then said:

> "We therefore hold these appeals under advisement and, under the circumstances, hold that the parties thereto may file such motions and briefs as they deem desirable in accordance with the regular briefing schedule of this court computed from the date of filing of this opinion."

However, on May 8, 1970 the Illinois Supreme Court on its motion re-examined the order granting these Appellants leave to appeal to that court, determined that such motion had been improvidently granted, vacated and set aside its order of March 10, 1960, and dismissed these appeals (Appellants' Appendix, page 8, paragraph 1). This order was entered before any briefs were filed by these Appellants with the Supreme Court of Illinois or any arguments made to that court.

Appellants listed in Appendix 1 to the jurisdictional statement sought leave to file notices of appeal on the theory that Rule 303(e) of the Rules of the Illinois Supreme Court permitted such a motion. But, Rule 303(b)(1) expressly made the provisions of Rule 303(e) inapplicable.

Appellants contend that with regard to those cases listed in Appendix 2 to the jurisdictional statement that the motion for leave to file notices of appeal made more than 60 days after the entry of the judgments was authorized by Rule 366(a)(5) of the Rules of the Supreme Court of Illinois. But, that rule pertains to the powers of the reviewing court in cases on appeal and has no effect whatsoever on the time within which the notice of appeal must be filed in order to obtain jurisdiction for the appeal.

Appellants incorrectly state in their footnote on page 9 of the jurisdictional statement that prior to January 1, 1970, the Rules of the Illinois Supreme Court were in conflict with the appeal provision of the Forcible Entry and Detainer Act of Illinois and allowed 30 days within which to file a notice of appeal in all cases. The fact is that Rule 1 of the Illinois Supreme Court Rules in effect prior to January 1, 1970 provided in part as follows:

> "The rules on appeal supersede provisions of the Civil Practice Act and the Injunction Act inconsistent with the rules, and govern all appeals except to the extent that the appellate procedure in a particular kind of action is regulated by a statute other than the Civil Practice Act or the Injunction Act."

Since the Forcible Entry and Detainer Act of Illinois has at all times provided a specific procedure for appeal from a judgment of the trial court, that statute governed appeals in such proceedings prior to January 1, 1970. After January 1, 1970 Illinois Supreme Court Rule 303(b)(1) specifically adopted the appellate procedure set forth in the

Forcible Act. The Illinois Supreme Court Rules Committee, the Chairman of which is a partner in one of the firms representing these Appellants, stated in the Committee Comments with regard to this Rule as follows:

> "Paragraph (b) was inserted in the rule in 1969 as a part of the revision designed to make the Supreme Court rules applicable to appeals that were formerly governed in whole or in part by special statutes. The authority for this action is found in the provision of the Judicial Article, effective January 1, 1964, that directs the Supreme Court to 'provide by rule for expeditious and inexpensive appeals.' Ill. Const., Art. VI, Sec. 7."
>
> "The statutory provisions incorporated by reference govern appeals in forcible entry and detainer and local improvement litigation. These special statutory proceedings have peculiar characteristics, arising from the nature of the problems with which they deal, which require that the trial and appellate procedures be closely integrated, as they are in the statutes."

Since no ruling was made by the Supreme Court of Illinois and none could have been made with regard to the constitutionality of the appeal requirements of the Illinois Forcible Entry and Detainer Act in these cases, no right of appeal to this Court exists under Title 28, United States Code, Section 1257(2).

This Court's decision in *John* v. *Paullin*, 231 U. S. 583, is directly in point. In that case this Court said at page 585:

> "As the supreme court of the state did not pass upon the merits of the case or upon the correctness of any of the rulings below, but, on the contrary, held that it was powerless to do so because its appellate jurisdiction was not invoked in accordance with the laws of the state, we do not perceive any theory upon which its judgment of dismissal may be reviewed by

> us consistently with the familiar limitations upon our authority. * * * Certainly no Federal right was denied by that court, and if, as was held by it, its appellate jurisdiction was not properly invoked, no Federal question was before it for decision."

And at page 586:

> "Thus it appears nothing was decided but the preliminary question of the court's jurisdiction to pass upon the controverted matter shown in the record and that this question was resolved according to what the court deemed to be the true construction and effect of applicable provisions of the Constitution and laws of the state. In short, the judgment of dismissal turned entirely upon a question of local law."

See also: *Raley* v. *Ohio*, 360 U. S. 423, 435 and *Street* v. *New York*, 394 U. S. 576, 581.

Appellants contend at page 3 of their Jurisdictional Statement that jurisdiction is sustained by *Lawrence* v. *State Tax Commission*, 286 U. S. 276, 282-83. That decision actually supports this motion to dismiss. In *Lawrence* this Court stated at page 282:

> "But the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected *when such judicial action is properly invoked.*" (Emphasis supplied.)

Here, there was clearly no compliance with the requirement for invoking judicial review of the judgments in favor of Appellees in the cases now sought to be appealed to this Court. In addition, since the validity of the Illinois Forcible Entry and Detainer Act appeal provisions was not challenged by Appellants in either the trial courts or in the Supreme Court of Illinois, no basis exists for this purported appeal.

There Is No Substantial Federal Question.

Assuming *arguendo* that Appellants had claimed that the equal protection clause and the due process clause precluded the State from providing for a shorter appeal period in Forcible Act cases and that the Supreme Court of Illinois had ruled adversely, such ruling would not present a substantial Federal question.

Appellants claim in this Court that the shorter appeal period in such cases constitutes discrimination is without merit. In *Spring, Inc.* v. *Little*, Docket Nos. 41730, 41739 cons., the Supreme Court of Illinois held on November 18, 1970 as follows:

> ". . . A short period of time for taking an appeal and a compulsory bond requirement are not violative of due process or equal protection if there are valid and justifiable bases for differentiating between different classes of litigation. There is no contention, and indeed, none can be made, that there is any differentiation in the treatment accorded either litigant in a forcible entry and detainer proceeding. The abbreviated time for perfecting an appeal is in keeping with the summary nature of the proceedings. * * * In the case of forcible entry and detainer there are strong reasons for a differentiation from other types of litigation. * * * It appears that these reasons were the implied basis for this court's commentary in *Board of Education* v. *County Board of School Trustees*, 28 Ill. 2d 15, 19, that 'we can conceive of substantial reasons for providing short appeal periods in forcible detainer matters—not the least of which may be the possibility of serious or irreparable damage by irresponsible tenants who might otherwise remain longer in possession'. A delayed appeal would be inconsistent with the purpose of the Forcible Entry and Detainer Act of providing a summary remedy in which the rights of parties may be speedily determined, *Kruse* v. *Ballsmith*, 332 Ill. App. 301, 307."

The same day the Supreme Court of Illinois filed its decision in *Alexander, et al. v. Hamilton Corporation, et al.*, Appendix 7 to Appellants' Jurisdictional Statement. The Illinois Supreme Court held with regard to the contention made there that the notice of appeal provision of the Forcible Act constituted a denial of equal protection at Appendix page 32:

> ". . . But the equal-protection clause of the Fourteenth Amendment does not prevent a State from adjusting its legislation to differences in situation, and a statute affecting a classification of persons or objects is not unconstitutional merely because it affects one class and not another, provided it affects all members of the same class alike and so long as the classification is not arbitrary and founded upon some substantial difference in circumstances or condition properly related to the classification.
>
> • • • • •
>
> "The legislature could reasonably determine that eviction proceedings against contract buyers, for the most part, result from their failure to pay contract installments, and that to permit a defaulting buyer to have a 30-day appeal period would be to permit him another month of occupancy and possession without charge. And, on the other side of the coin, the party found to be entitled to possession is denied the money that sale or rental to another might bring and, in effect, is restrained from alienating the property in question while the possibility of an appeal is hanging in the balance. And perhaps to a greater degree than in the case of a tenant, the legislature could properly consider that a longer period in which to file a notice of appeal and security bond in forcible entry and detainer proceedings could result in abuses and irretrievable loss. Maintenance and the making of necessary repairs could be abandoned in the face of the judgment of possession. Fixtures could be removed, insurance could be cancelled if the obligation to provide a policy is on the buyer, and it is not inconceivable that

> a vengeful defendant could misuse and damage the premises. The legislature could therefore conclude that, in proceedings of this nature, there is a need for expeditious review and for properly securing the party against whom review is sought against loss and damage. Under the circumstances, we cannot say that the statutory distinctions between forcible entry litigants and those in other actions are 'purely arbitrary', or that they create an 'invidious discrimination'. *Morey* v. *Doud*, 354 U. S. 457, 463, 1 L. Ed. 2d 1485, 77 S. Ct. 1344; see also 16A, C. J. S., § 559."

The foregoing statement of the Illinois Supreme Court reflects the reality of the situation. In almost every instance where the property was restored to Appellee's possession in these cases extensive deliberate damage to the houses was present and it was necessary to expend substantial sums to put the properties in suitable condition for leasing or make similar concessions to the lessee who undertook to make such repairs himself. In addition, there was an almost general pattern of fixtures having been removed prior to Appellee's regaining possession. Kitchen cabinets, built-in ovens and ranges, plumbing fixtures, window frames, intercommunication systems, sump pumps and even door knobs were among the items removed.

Appellants contend that similar questions are now before this Court in *Sanks* v. *Georgia*, restored to calendar for re-argument, 399 U. S. 922. This is not correct. The statute involved in *Sanks* v. *Georgia* requires a defendant in a eviction proceeding to file a bond as a condition precedent to a trial on the merits. No similar provision is contained in the Illinois Forcible Entry and Detainer Act. The only bond requirement provided by the Illinois statute relates to an appeal from a final judgment after a trial on the merits and such bond is required of any litigant, whether plaintiff or defendant, who elects to appeal from an adverse

judgment for possession (Chapter 57, Illinois Revised Statutes, §§ 19, 20 and 21).

But, Appellants have no standing to challenge the constitutionality of the appeal bond provision of the Forcible Act, because that provision did not adversely affect any of them. In only two cases of the 55 cases involving these Appellees did the Appellants request the trial court to fix the amount of an appeal bond and even in those cases they did not file notices of appeal. Consequently any attack on the constitutionality of the appeal bond provisions of the Forcible Act is being made by Appellants insofar as it may have affected other persons. See *United States* v. *Raines*, 362 U. S. 17, 21.

Appellants ignore the fact that they did not even file notices of appeal and argue in this Court that they should have been allowed to appeal without filing a supersedeas bond. They quote from the slip opinion of the Illinois Supreme Court in *Jack Springs, Inc.* v. *Little* at page 20 of the Jurisdictional Statement and assert on the basis of such quotation that the court "seems to conclude that appeals in Forcible Act cases are not conditioned on the filing of a bond." However, the language upon which they rely was deleted by the Supreme Court of Illinois in its corrections of the opinion. Obviously a decision which would allow an appeal in this type of action without the filing of a supersedeas bond would be illogical. The only issue involved in the action is the right of possession. If that issue is decided against the occupant of the premises and an appeal is allowed without a supersedeas, then the issue would become entirely moot during the pendency of the appeal because the writ of restitution would have issued, possession would have been delivered to the plaintiff, and the property would then be leased or sold to third persons who were not parties to the litigation and whose inter-

vening rights could not be affected by the appeal. The net result would be a meaningless appeal and a useless burden on the time of the courts of review. Of course, mootness would not occur if execution on the judgment of the court was prevented by the force of mob action, and such action would be encouraged and fostered by allowing an appeal without a supersedeas bond.

It is equally clear that if the filing of a notice of appeal was permitted to operate as a supersedeas of the judgment for possession without the filing of a bond by reason of the assertion that the occupant of the premises was "poor", then the unsuccessful party would be invited to use the property and the owner would be deprived of all protection from financial loss and damage during the pendency of the appeal, which on average in civil cases in the appellate division involved here requires eighteen months. Without doubt the owner would suffer an effective taking of his property without due process.

Lastly, Appellants contention that they were denied an appeal because of their "poverty" represents a distortion of the facts. None of the Appellants sought to defend the proceedings necessarily brought under the Forcible Entry and Detainer Act of Illinois as poor persons, nor could they. Appellants in the 55 cases involving these Appellees were the purchasers of newly constructed solid brick three and four bedroom homes. On July 1, 1969 they undertook for the second time a concerted payment strike against Appellees with the sole purpose of financially coercing Appellees into renegotiating the amount Appellants had agreed to pay for the homes involved. The statement of the Supreme Court of Illinois in *Alexander* v. *Hamilton*, reproduced in Appellants' Appendix at page 27, bears emphasis with regard to this claim of "poverty":

> "In what must be viewed as a belated effort to create standing to raise the constitutional point they

> seek to make, defendants have, however, filed so-called 'poverty affidavits' in this court. We say 'so-called' because in our opinion the affidavits, with few if any exceptions, fail to establish defendants as indigent persons. Indeed, one of them claiming to be impoverished admits to a take-home pay of $1,250 per month, savings of $3,000, and the ownership of two automobiles, including a 1970 Cadillac."

Appellees submit that they have demonstrated that there is no substantial Federal question involved in these purported appeals.

All of the Cases Involving These Appellees Are Moot.

Each of the 55 cases involving these Appellees is moot. In 20 of the cases Appellants are no longer in possession of the properties involved and they have been leased to third parties who are not involved in this litigation. Therefore, any decision by this Court in this purported appeal could not benefit any of those Appellants because of the intervention of rights of third persons. Appellants in 30 of the remaining 35 cases have pursuant to stipulation reinstated their contracts with Appellees and continue to perform their contractual obligations. Hence, no controversy exists between the parties and no issues are present for adjudication. In four of the remaining five cases Appellants were either evicted or vacated the premises and the premises were subsequently fire bombed or otherwise burned by unknown persons. Those properties remain uninhabitable. In the remaining case the would-be Appellants were evicted by the Sheriff of Cook County, Illinois, moved back into the premises following the eviction and have been enjoined from intefering with Appellee's right to possession of the property in an action which is separate and distinct from any proceeding sought to be brought here.

Appellees submit that the above captioned purported appeal to this Court is entirely moot with regard to the cases in which they are involved.

This Court should note that Appellees are informed and believe that the attorneys for Appellants do not even represent some of the Appellants on whose behalf the Jurisdictional Statement was filed.

Respectfully submitted,

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SUPREME COURT, U. S.

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IN THE

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OCTOBER TERM, 1970

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Plaintiff-Appellee.

(Together With 80 Other Cases.)

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION PURSUANT TO RULES 16(b) AND 16(d) TO DISMISS APPEAL.

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THE DARNELL-WARREN PRINTING COMPANY, CHICAGO

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Gerald Crane; Cosmopolitan National Bank, as Trustee; American National Bank, as Trustee; Lawndale National Bank, as Trustee; and Sears Bank & Trust Co., as Trustee. Plaintiff-Appellees in 12 of the 81 cases sought to be appealed to this Court, adopt in full the Motion Pursuant To Rules 16(b) and 16(d) To Dismiss Appeal heretofore filed in this case by Hamilton Corporation, Lawson Corporation, *et al.*

In nearly every respect, the posture of the 12 cases

relating to these Plaintiff-Appellees is the same as the posture of the 55 cases relating to the Hamilton Corporation, Lawson Corporation, and related Plaintiff-Appellees. For example, the case entitled *Gerald Crane* v. *Annie Louise Reynolds*, the first case on the list given in Appendix I to the Jurisdictional Statement of Defendants-Appellants, is now entirely moot in that the real estate contract in question has been fully reinstated, the Defendant-Appellant is currently making her payments, and the writ of restitution has been quashed, the right to possession of the property being no longer in dispute. Again, with reference to these Plaintiffs-Appellees, a number of the Appellants have already been evicted from the properties in question and have unlawfully moved back into the premises following said evictions. Appellees are currently conducting actions against Appellants which are separate and distinct from any proceeding sought to be brought here.

Similarly, in less than half of the 12 cases involving these Appellees did the Appellants request the Trial Court to fix the amount of an appeal bond, and even in these instances, they did not file timely notices of appeal; consequently, the Appellants in the cases relating to these Appellees also have no standing to challenge the constitutionality of the appeal bond provisions of the Forcible Act, because such provisions of the statute did not adversely effect any of them. Finally, the wisdom of the Illinois Legislature in requiring the posting of appeal bonds is also manifest in those cases relating to these Plaintiffs-Appellees in that in a number of instances, some of which are not involved on these appeals, in which the Appellants have been evicted or otherwise vacated the properties in question, the properties were returned to Appellees possession with extensive deliberate damage requiring Appellees to expend substantial sums to restore the properties to suitable condition for leasing or sale.

For these reasons and those set forth in the Motion heretofore filed by Hamilton Corporation, Lawson Corporation, *et al.* on this appeal, these Plaintiffs-Appellees respectfully urge this Court to dismiss this appeal.

Respectfully submitted,

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